

Act.⁵⁹ As stated in the Notice of an Application for Exemptive Relief, however, “the Commission preliminarily believes that [the Trust’s] proposed ETFs do not meet the standard for exemptive relief under section 6(c) of the [1940] Act,”⁶⁰ and accordingly, “absent a request for a hearing that is granted by the Commission, the Commission intends to deny [the Trust’s] request for an exemption under section 6(c) of the [1940] Act as not necessary or appropriate in the public interest and as not consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the [1940] Act.”⁶¹

The purpose of the Exchange’s proposed rule change is to allow the listing and trading of the proposed Funds and future funds of the same type. The Commission does not believe that approving this proposed rule change would be consistent with the requirement under the Exchange Act that an exchange’s rules be consistent with the protection of investors and the public interest, because the Commission has stated its intention to deny the Trust’s request for exemptive relief under the 1940 Act and because denying this exemptive relief would mean that the Funds could not legally operate.⁶²

IV. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular,

⁵⁹ See note 3 and accompanying text, *supra*. The Trust, the Advisor, and the Distributor submitted an application for an order under section 6(c) of the 1940 Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the 1940 Act and rule 22c-1 under the 1940 Act; under sections 6(c) and 17(b) of the 1940 Act for an exemption from sections 17(a)(1) and 17(a)(2) of the 1940 Act; and under section 12(d)(1)(j) of the 1940 Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act.

⁶⁰ Notice of Application for Exemptive Relief, *supra* note 3, at 3.

⁶¹ *Id.* at 31.

⁶² The Commission’s determinations under Section 6(c) of the 1940 Act with respect to the Funds are preliminary and could change if a hearing were requested, the Commission were to grant the request, and persuasive new information were presented. Under Section 19(b)(2) of the Exchange Act, however, the Commission must approve, disapprove, or institute proceedings to disapprove this proposed rule change by November 11, 2014, and it must do so on the basis of the facts as they currently exist, irrespective of any information that might be presented to or considered by the Commission at a later date in the context of its final determination under Section 6(c) of the 1940 Act.

with Section 6(b)(5) of the Exchange Act.⁶³

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-BATS-2014-018) be, and it hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁴

Kevin M. O’Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73564; File No. SR-EDGA-2014-26]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGA Exchange, Inc.

November 7, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2014, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to

⁶³ Having found for the reasons explained above that the Exchange’s proposed rule change is not consistent with the requirements of the Exchange Act, the Commission does not believe it is necessary to address each of the particular objections raised by the commenter who opposes the proposed rule change.

⁶⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

Members⁵ and non-members of the Exchange pursuant to EDGA Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange’s Web site at <http://www.directedge.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to decrease the fee for orders yielding Flag K, which routes to PSX using ROUC or ROUE routing strategies. In securities priced at or above \$1.00, the Exchange currently assesses a fee of \$0.0026 per share for Members’ orders that yield Flag K. The Exchange proposes to amend its Fee Schedule to decrease this fee to \$0.0024 per share from \$0.0026 per share. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (“DE Route”), the Exchange’s affiliated routing broker-dealer, is charged for routing orders to PSX when it does not qualify for a volume tiered reduced fee. The proposed change is in response to PSX’s November 2014 fee change where PSX decreased the fee to remove liquidity via routable order types it charges its customers, from a fee of \$0.0026 per share to a fee of \$0.0024 per share.⁶

⁵ The term “Member” is defined as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.” See Exchange Rule 1.5(n).

⁶ See PSX, Equity Trader Alert 2014-95, Updates to PSX and BX Pricing for November 2014, dated October 27, 2014, available at <http://>

When DE Route routes to PSX, it will now be charged a standard rate of \$0.0024 per share.⁷ DE Route will pass through this rate on PSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange proposes to implement this amendment to its Fee Schedule on November 3, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposal to decrease the pass through fee for Members' orders that yield Flag K from \$0.0026 per share to \$0.0024 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through DE Route. Prior to PSX's November 2014 fee change, PSX charged its members, which includes DE Route, a fee of \$0.0026 per share to remove liquidity using non-routable order types, which DE Route passed through to the Exchange and the Exchange charged to its Members. In November 2014, PSX decreased this fee from \$0.0026 per share to \$0.0024 per share.¹⁰ Therefore, the Exchange believes that its proposal to pass through a fee of \$0.0024 per share for orders that yield Flag K is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to PSX. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in

furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal to pass through a fee of \$0.0024 per share for Members' orders that yield Flag K would increase intermarket competition because it offers customers an alternative means to route to PSX for the same price as entering orders on PSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4 thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-EDGA-2014-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGA-2014-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGA-2014-26, and should be submitted on or before December 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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www.nasdaqtrader.com/MicroNews.aspx?id=ETA2014-95.

⁷ The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on PSX, its rate for Flag K will not change.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See *supra* note 6.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

¹³ 17 CFR 200.30-3(a)(12).