

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

The Exchange neither solicited nor received comments on the proposal.

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

CBOE has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

The Exchange has asked the Commission to waive the 30-day operative delay. CBOE believes that the proposed order eligibility parameters for the legging functionality will provide the Exchange with flexibility in administering the legging functionality and assist in the maintenance of fair and orderly markets by helping to mitigate potential risks associated with the legging of stock-option orders, including the risk of executions at multiple price points that are away from the NBBO and potentially erroneous, and the risk that one leg of the order will go unexecuted, resulting in an incomplete execution of the stock-option order and a partial position that is unhedged.

The Commission grants the CBOE's request.¹⁵ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the order eligibility parameters could help to mitigate some of the risks associated with the legging of stock-option orders, including the risk of an incomplete execution of one leg of the order that results in a position that is not fully hedged, and the risk that a

component of the order could be executed at multiple prices that are away from the NBBO and potentially erroneous. The Commission notes, in addition, that CBOE will notify Trading Permit Holders through a Regulatory Circular of the legging functionality parameters for an option class before the parameters go into effect.¹⁶

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2011-009 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2011-009. This file number should be included on the subject line if e-mail 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 website 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 a.m. and 3 p.m. Copies of such 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-CBOE-2011-009 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-2970 Filed 2-9-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63839; File No. SR-EDGA-2011-03]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

February 3, 2011.

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 February 1, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "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 self-regulatory organization. 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 proposes to amend its fees and rebates applicable to Members³ of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) also requires an exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

¹⁵ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ See notes 8 and 10, *supra*. See also CBOE Rule 6.53C, Interpretation and Policy .01.

described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

In SR-EDGA-2011-01,⁴ the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to add its routing strategies, which were contained in its fee schedule, to the rule and to introduce additional routing strategies to the rule. Two of the strategies that the Exchange added to Rules 11.9(b)(3)(h) and (i) were the ROUT and ROUX routing strategies. Under both routing strategies, an order checks the Exchange's system ("System") for available shares and then is sent to destinations on the System routing table. In Rule 11.9(b)(3) the Exchange defined the term "System routing table" to mean the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.

In this filing, the Exchange proposes to add the corresponding flags for the use of the ROUT and ROUX strategies to its fee schedule and assign corresponding fees. For any order routed using the ROUT routing strategy, the Exchange is proposing a fee of \$0.0025 per share to be assessed and a flag of "RT" to be yielded, except when routed to EDGX Exchange, Inc. ("EDGX"), in which case a flag "T" is yielded a flag and a fee of \$0.0030 is assessed. The latter exception is clarified in proposed footnote 10. Similarly, for any order routed using the ROUX routing strategy, the Exchange is proposing a fee of \$0.0027 per share to be assessed and a flag of "RX" to be

yielded, except when routed to EDGX, in which case a flag "T" is yielded a fee of \$0.0030 is assessed. The latter exception is clarified in proposed footnote 10. The Exchange notes that the fee is higher if an order is routed to EDGX, which is affiliated with EDGA, rather than to other destinations on the System routing table using the ROUT/ROUX strategies.

In SR-EDGA-2011-01, the Exchange also added the ROOC routing option in Rule 11.9(b)(3)(p) for orders that the entering firm wishes to designate for participation in the opening or closing process of a primary listing market (NYSE, Nasdaq, NYSE Amex, or NYSE Arca) if received before the opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening or closing process, they are either posted to the book, executed, or routed like a ROUT routing option, as described in Rule 11.9(b)(3)(h). In this filing, the Exchange proposes to add the corresponding flags for the use of the ROOC strategy to its fee schedule and assign corresponding fees. If the entering firm wishes the order to participate in the listing market close via the ROOC strategy, it will be assigned a flag of "CL" and a fee of \$0.0010 per share, except for NYSE Arca. This fee represents a blended rate of all four primary listing market fees for participation in the market close. For ease of administration, the Exchange uses this blended rate as it represents an average fee from the primary listing markets. However, a flag of "O" will be yielded and the associated fee for the "O" flag, \$0.0005 per share, will be assessed, if the order is routed to the NYSE Arca closing process. This is clarified in proposed footnote 9 to the fee schedule and represents a pass through of the NYSE Arca fee. If the entering firm wishes to designate that the order participate in the opening process of NYSE Amex and it adds liquidity, it will be assigned a flag of "g" and a rebate of \$0.0015 per share. This rebate represents a pass through of the NYSE Amex rebate. If the entering firm wishes to designate that the order participate in the opening process of NYSE Arca and it adds liquidity, it will be assigned a flag of "9" and a rebate of \$0.0021 per share. This rebate represents a pass through of the NYSE Arca rebate. The Exchange proposes to add these flags effective February 1, 2011 but not implement them until the ROOC strategy is effective, which is on or about February 14, 2011.

Currently, the "K" flag is yielded when an order is routed to BATS BZX Exchange using the ROBA order type. The Exchange proposes that this flag be

yielded and its associated fee of \$0.0025 per share be assessed when an order is routed to Nasdaq PSX using the ROUC order type, as defined in Rule 11.9(b)(3)(a).⁵ This fee of \$0.0025 per share represents a pass through of the Nasdaq PSX rate.

Currently, the Exchange provides a reduced rate for non-displayed ("Flag H") executions for a non-aggregated MPID representing the volume of a Member and meeting certain criteria. For executions in stocks priced \$1.00 and over, if the average daily volume ("ADV") of Flag H executions for a non-aggregated MPID is increased such that its ADV is 1,000,000 greater than its ADV of Flag H executions averaged across the month of October 2010, then the non-aggregated MPID would qualify for a rate of \$0.00025 per share. For executions in stocks priced below \$1.00, if the ADV of Flag H executions for a non-aggregated MPID is increased such that its ADV is 1,000,000 greater than its ADV of Flag H executions averaged across the month of October 2010, then the non-aggregated MPID would qualify for a rate of .025% of the total dollar volume of the Flag H executions. The Exchange is proposing to delete these reduced rates, which are found in footnote 2 of the fee schedule, effective February 1, 2011 as it does not believe that the reduced rates are effective at incenting Members to add liquidity to the Exchange.

Currently, stocks priced below \$1.00 are charged 0.20% of the dollar value of the transaction when routed to Nasdaq and removing liquidity in securities on all Tapes, as noted in footnote 3 of the fee schedule and as indicated on corresponding flag J. The Exchange proposes to increase this fee to 0.30% of the dollar value of the transaction to reflect an increase in rate provided by Nasdaq effective January 3, 2011.

Finally, in the description of the SW flag on the fee schedule the Exchange proposes to make a technical change to amend the word "routing" to "routed."

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on February 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶

⁵ Rule 11.9(b)(3)(a) defines the ROUC order type as a routing option under which an order checks the System for available shares, and then is sent sequentially to destinations on the System routing table, Nasdaq OMX BX, and NYSE. If shares remain unexecuted after routing, they are posted on the EDGX Exchange's book.

⁶ 15 U.S.C. 78f.

⁴ See SR-EDGA-2011-01 (January 21, 2011).

in general, and furthers the objectives of Section 6(b)(4),⁷ 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 the fees of \$0.0025 per share/\$0.0027 per share, respectively, for the ROUT and ROUX routing strategies, represent an equitable allocation of reasonable dues, fees, and other charges. When compared to other similar fees assessed for other Exchange routing strategies, the ROUT and ROUX strategies route to more destinations and more costly ones and thus, the Exchange passes on higher fees to its Members. In addition, other market centers charge comparable rates. The comparable routing strategy to the ROUT strategy is either Parallel D or Parallel 2D with the DRT (Dark routing technique) option on BATS BZX Exchange (“BATS”) and SCAN/STGY on Nasdaq OMX Exchange (“Nasdaq.”) BATS charges \$0.0028 per share for its Parallel D and Parallel 2D routing strategies and \$0.0020 per share for its DRT option. Nasdaq charges \$0.0030 per share for its SCAN and STGY routing strategies. The comparable routing strategy to the ROUX strategy is also the Parallel D or Parallel 2D strategies on BATS and the SKIP/SKNY strategies on Nasdaq. BATS charges \$0.0028 per share for either of their strategies and Nasdaq charges \$0.0030 for either of their strategies.

The Exchange believes that the fees associated with the new flags described above represent an equitable allocation of reasonable dues, fees, and other charges. The fee associated with the “CL” flag (\$0.0010) (except for NYSE Arca) represents a blended rate of all four primary listing market fees for participation in the market close. However, a flag of “O” will be yielded and the associated fee for the “O” flag, \$0.0005 per share, will be assessed, if the order is routed to the NYSE Arca closing process. This represents a pass through of the NYSE Arca fee. If the entering firm wishes to designate that the order participate in the opening process of NYSE Amex and it adds liquidity, it will be assigned a flag of “8” and a rebate of \$0.0015 per share. This rebate represents a pass through of the NYSE Amex rebate. If the entering firm wishes to designate that the order participate in the opening process of NYSE Arca and it adds liquidity, it will be assigned a flag of “9” and a rebate of \$0.0021 per share. This rebate also represents a pass through of the NYSE Arca rebate. The fee associated with the K flag (\$0.0025 per share) also

represents a pass through of the Nasdaq PSX rate. In addition, as discussed above, stocks priced below \$1.00 are now proposed to be charged 0.30% of the dollar value of the transaction when routed to Nasdaq and removing liquidity in securities on all Tapes, as noted in proposed footnote 3 of the fee schedule. This increase in fee (from 0.20% of the dollar value of the transaction) reflects a pass through of the Nasdaq’s increased rate, effective January 3, 2011.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder. At any time within 60 days of the filing of such 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 e-mail to rule-comments@sec.gov. Please include File Number SR-EDGA-2011-03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-EDGA-2011-03. This file number should be included on the subject line if e-mail 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,¹⁰ 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 a.m. and 3 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-

¹⁰ The text of the proposed rule change is available on Exchange’s Web site at <http://www.directedge.com>, on the Commission’s Web site at <http://www.sec.gov>, at EDGA, and at the Commission’s Public Reference Room.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

2011-03 and should be submitted on or before March 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-2969 Filed 2-9-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63838; File No. SR-Phlx-2011-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Modify Fees for NASDAQ OMX PSX

February 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 26, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 proposes to modify the fees applicable to trading on the NASDAQ OMX PSX system ("PSX"). The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 aspects of such statements.

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

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX for trading stocks priced at \$1 or more. Since its launch in October 2010, PSX has employed a promotional, "inverted" pricing structure under which the rebate paid to members that provide liquidity exceeds the fee charged for accessing liquidity. Specifically, PSX currently charges \$0.0013 per share executed for orders that access liquidity, while paying a higher rebate for orders that provide liquidity. Consistent with PSX's goal of encouraging display of larger order sizes, the Exchange currently offers a rebate of \$0.0024 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but only \$0.0018 per share executed for Non-Displayed Orders or for Displayed Orders with an original order size of less than 2,000.³

Effective February 1, 2011, the fee for accessing liquidity will increase to \$0.0025 per share executed, while the rebate for providing displayed liquidity with an original order size of 2,000 or more shares will remain \$0.0024 per share executed. The rebate for Displayed Orders with an original order size of less than 2,000 will increase to \$0.0022 per share executed. However, consistent with PSX's goal of encouraging greater display of liquidity, the rebate for Non-

³ The higher credit applies to an order as it is decremented by partial executions, but does not apply in circumstances where an order for more than 2,000 shares is entered and then reduced in size by the entering Participant, such that the order is subsequently in the System for less than 2,000 shares. Moreover, changes to orders that result from system operations other than execution and decrementation are deemed to result in new orders. For example, a Pegged Order is considered a new order each time its price changes.

Thus, if a Participant entered a 2,400 share order that posted to the PSX book, the order was executed for 1,000 shares, and the remainder of the order was then executed for 1,400, both of the executions would receive the higher credit. However, if a PSX Participant entered a 2,400 share order and subsequently modified the order down to 1,500 shares, the lower credit would apply. Finally, if a Participant entered a 2,400 share buy order pegged to the national best bid, the order executed for 1,000 shares, and the order then repriced due to a change in the national best bid, the 1,000 share execution would receive the higher 0.0024 credit but a subsequent execution of the repriced order would receive the lower credit because it would be treated as a new order with a size below 2,000 shares.

Displayed Orders that provide liquidity will be decreased to \$0.0010 per share executed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.*, its propensity to add or remove liquidity), its usage of Non-Displayed orders, and the size of the orders that it enters. The Exchange believes that the proposal reflects an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

Although the change will result in an increase of the fee charged to access liquidity on PSX, the fee structure adopted by PSX at its inception, in which liquidity provider rebates paid per share exceeded access fees charged, reflected a promotional pricing structure for a new market entrant under which costs exceed revenues on every share executed. Accordingly, the change is a reflection of PSX's more established status and the desirability of adopting a price model that results in net execution revenues to the Exchange. Similarly, although the proposed decrease in the rebate paid with respect to Non-Displayed Orders effectively constitutes a price increase, the Exchange believes that it may help to advance its market structure goals of encouraging the use of the venue as a means to display liquidity. The Exchange further notes that these price increases will be partially offset by the increase in the rebate paid with respect to orders with a size below 2,000 shares.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees continue to be reasonable and equitably allocated to members on the

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).