

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2011 - * 26	Amendment No. (req. for Amendments *)
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Proposed Rule Change by EDGX Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).  
EDGX Exchange, Inc. proposes to amend the fee schedule to establish an Annual Membership Fee, Monthly Trading Rights Fee, and a Monthly MPID Fee

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Thomas Last Name \* McManus  
 Title \* Chief Regulatory Officer  
 E-mail \* tmcmanus@directedge.com  
 Telephone \* (201) 418-3471 Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/19/2011  
 By Thomas N. McManus Chief Regulatory Officer  
 (Name \*) (Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Thomas McManus,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) EDGX Exchange, Inc. (“EDGX” or the “Exchange”), proposes to amend the fee schedule assessed on members, effective September 1, 2011, to establish: (i) an Annual Membership Fee; (ii) a monthly Trading Rights Fee; and (iii) a monthly fee for each member Market Participant Identifier (“MPID”) in excess of five MPIDs. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office, and at the Public Reference Room of the Commission.
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange’s Board of Directors approved the proposed rule change on July 18, 2011. This action constitutes the requisite approval under the Exchange’s Bylaws.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Thomas N. McManus  
Chief Regulatory Officer  
EDGX Exchange, Inc.  
201-418-3471

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

(a) Purpose

To help pay for the costs of regulating EDGX members, the Exchange proposes to establish the following membership fees: (i) an Annual Membership Fee for EDGX members; (ii) a Trading Rights Fee for EDGX members; and (iii) a fee for each MPID approved by EDGX for use by a member firm on EDGX’s systems in excess of five. The Exchange believes that each fee is warranted in order to provide for a dedicated source of revenue to be applied toward funding the overall regulation of the Exchange and its members. On July 26, 2011, the Exchange provided its Members with notice about these proposed fees, which would be implemented on September 1, 2011, pending SEC approval.

### Annual Membership Fee & Trading Rights Fee

First, EDGX proposes to charge an Annual Membership fee of \$2,000 to each member firm of EDGX which will support their exchange membership for the calendar year. The fee will be charged per member firm. For 2011, the Exchange proposes to charge firms on a pro-rated basis beginning September 1, 2011. Beginning in January 2012, the Exchange plans to charge an Annual Membership Fee which will be assessed on all EDGX members as of a date determined by EDGX in January of each year. For any month in which a firm is approved for membership with the Exchange after the January renewal period, the Annual Membership Fee will be pro-rated beginning on the date on which membership is approved. The pro-rated fee will be calculated based on the remaining trading days in that year, and assessed in the month following membership approval. For example, if a firm applies for membership with the Exchange on or before the close of the January renewal period, and is approved for membership in the same month, the new Member will pay a \$2000 Annual Membership fee. However, if a firm applies and is accepted for membership with the Exchange in February 2012, the new Member will be assessed a pro-rated Annual Membership Fee for the period beginning the first trading day in February in which they are a member through the end of 2012. The fee will be assessed in the next month's billing cycle. In this case, March 2012.

In addition, the fee will not be refundable in the event that the firm ceases to be an EDGX member following the date on which fees are assessed. However, if a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the date any Annual Membership Fee for a given year will be assessed (i.e., September 1, 2011, January 1, 2012, etc.) and the Member does not utilize the facilities of EDGX<sup>1</sup> during such time, then the Member will not be obligated to pay the Annual Membership Fee. For example, if a Member submits a request to terminate their membership prior to close of business on August 31, 2011, the Member will not be charged any Annual Membership Fee regardless of how long it takes for the Member's voluntary termination of membership to become effective. Prior to the September 1, 2011 implementation date for these fee changes only, the Exchange will also waive monthly Trading Rights and MPID fees, as described below, if a Member is pending a voluntary termination of rights pursuant to Rule 2.8 and the Member does not utilize the facilities of EDGX during such time. This waiver of such fees by the Exchange will again occur regardless of how long it takes for the Member's voluntary termination of membership to become effective. The Exchange believes this to be appropriate since ordinarily there is a 30 day waiting period before such resignation shall take effect provided the conditions provided for in Rule 2.8 are satisfied.<sup>2</sup>

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<sup>1</sup> This would include Members adding, removing, or routing liquidity to EDGA.

<sup>2</sup> These conditions include: (i) the Exchange's receipt of such written resignation; (ii) the member's having satisfied all outstanding indebtedness due the Exchange;

Second, EDGX proposes to charge member firms a monthly Trading Rights Fee of \$300 per month for the ability to trade on the EDGX Exchange. Firms will be charged per month, regardless of the volume of shares traded. For any month in which a firm is approved for membership with the Exchange, the monthly Trading Rights Fee will be pro-rated beginning on the date on which membership is approved. The pro-rated fee will be calculated based on the remaining trading days in that month. In any month in which the firm terminates membership with the Exchange, the monthly Trading Rights Fee will be pro-rated based on the number of trading days which have elapsed in that month. The Exchange plans to implement the Trading Rights Fee and charge firms directly beginning September 1, 2011.

EDGX believes that even with these proposed fees, the cost of EDGX membership is generally lower than the cost of membership in other SROs.<sup>3</sup>

#### Market Participant Identifier (“MPID”) Fee

An MPID is a four character identifier that is approved by the Exchange and assigned to the member firm for use on the EDGX exchange to identify the firm on the orders sent to the Exchange and resulting executions. Many member firms request the use of one MPID as the identifier for their exchange transactions. However, a member firm may request additional MPIDs for use by separate business units and trading desks or to support sponsored access participants. EDGX notes that certain member firms possess many underutilized MPIDs through which very little or no activity occurs. These unused or underutilized MPIDs provide negligible benefit to the market, yet represent an administrative and regulatory burden to EDGX. In order to address the burden of administering

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(iii) any Exchange investigation or disciplinary action brought against the Member having reached a final disposition; and (iv) any examination of such Member in process having been completed, and all exceptions arising out of such examination having been satisfactorily resolved.

<sup>3</sup> See, e.g., NASDAQ OMX Group, Inc., Equity Rule 7001, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F4&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F> (assessing an \$3,000 annual membership fee and \$500 per month trading rights fee on members); New York Stock Exchange Price List 2011, at [http://www.nyse.com/pdfs/nyse\\_equities\\_pricelist.pdf](http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf) (assessing a \$40,000 annual trading license fee for the first two licenses held by a member organization, among other itemized regulatory and trading rights fees); Chicago Stock Exchange Fees and Assessments, at [http://www.chx.com/content/Participant\\_Information/Downloadable\\_Docs/Rules/CHX\\_Fee\\_Schedule\\_04252011.pdf](http://www.chx.com/content/Participant_Information/Downloadable_Docs/Rules/CHX_Fee_Schedule_04252011.pdf) (assessing a \$7,200 annual trading permit fee).

and supporting multiple MPIDs for member firms, EDGX proposes to assess a monthly fee of \$250 per month beginning September 1, 2011 for each MPID approved by the Exchange for use by a member firm on EDGX's systems in excess of five MPIDs. The MPID Fee will be assessed on a pro-rated basis by charging the firm based on the trading day in the month during which an MPID greater than five becomes effective for use. If the MPID is terminated within a month, the MPID Fee will be charged in full regardless of the number of trading days elapsed or remaining in that month. The Exchange believes that this practice is appropriate because of the administrative costs associated with disabling MPIDs. The Exchange also believes that assessing a fee on supplemental MPIDs will benefit the markets and investors because such fee will promote efficiency in MPID use.

The Exchange notes that NASDAQ currently assesses a Supplemental MPID Fee of \$1,000 per month, per MPID, for any MPID in excess of one. Similarly, the New York Stock Exchange ("NYSE") charges fees for access to its floor which are analogous to the proposed MPID fee. The NYSE fees are based on the number of individuals that a member firm wishes to employ on the floor of the exchange and include, among other things, an annual fee of \$40,000 per trading license per floor broker, a \$5,000 annual fee per handheld device used on the floor, and a \$250 annual badge maintenance fee per badge. Under the proposed MPID Fee schedule, EDGX member firms would not be charged for maintaining five or less MPIDs, but would pay the proposed \$250 monthly MPID fee only if the member maintains more than five MPIDS. In addition, members would be charged a proposed \$2,000 annual membership fee and trading rights fee of \$300 per month, totaling \$5,600 annually.<sup>4</sup> Thus, EDGX believes that even with the proposed MPID fee, the cost of EDGX membership is generally lower than the cost of membership in other SROs.

(b) Statutory Basis

EDGX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, because 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 that EDGX operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

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<sup>4</sup> See supra note 3 (explaining the fee structure of the NASDAQ OMX Group, Inc., the New York Stock Exchange, and the Chicago Stock Exchange).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

First, the Exchange believes that assessing an Annual Membership Fee and a Trading Rights Fee provides an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients. EDGX believes the Annual Membership Fee and monthly Trading Rights Fee are a reasonable and equitable method of ensuring that its fees fund a greater portion of the cost of regulating the EDGX market, and that even after assessing these fees, the overall cost of EDGX membership is reasonable as compared with the costs of membership in other SROs.

Second, with respect to MPID fees, member firms will continue to have discretion to request EDGX approval to use additional MPIDs on EDGX. Use of more than five MPIDs is voluntary and solely determined by the member firm's needs. The Exchange believes that charging for more than five MPIDs is reasonable given that other exchanges charge members for having more than one MPID.<sup>7</sup> The proposed Market Participant Identifier Fee will be imposed on all member firms equally based on the number of MPIDs approved for use on EDGX. EDGX also believes that the proposed fee will encourage efficiency in member firm's use of MPIDs.

Further, the market for transaction execution and routing services is highly competitive. Broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organizations markets, as well as broker-dealers and aggregators such as electronic communications networks. A member firm is able to select any venue of which it is a member or participant to send its order flow. As such, if member firms believe that the proposed (i) annual membership fee, (ii) trading rights fee, or (iii) fee for MPIDs in excess of five, is excessive they may easily choose to move their order flow elsewhere. EDGX believes that its proposed fees are comparable to, and lower than, analogous NASDAQ and NYSE fees.

#### 4. Self-Regulatory Organization's Statement on Burden on Competition

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

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<sup>7</sup> See, e.g., NASDAQ OMX Group, Inc., Equity Rule 7001, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F4&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Fdequityrules%2F> (assessing a Supplemental MPID Fee of \$1,000 per month, per MPID, for any MPID in excess of one).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act.

(b) This proposed rule change establishes dues, fees or other charge among its members and, as such, may take effect upon filing with the Commission pursuant to Exchange Act Section 19(b)(3)(A).

(c) Inapplicable.

(d) Inapplicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed EDGX Fee Schedule amendment.



EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGX-2011-26)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the EDGX Fee Schedule to establish an Annual Membership Fee, Monthly Trading Rights Fee, and a Monthly MPID Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 19, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 the fee schedule assessed on members, effective September 1, 2011, to establish: (i) an Annual Membership Fee; (ii) a monthly Trading Rights Fee; and (iii) a monthly fee for each member Market Participant Identifier ("MPID") in excess of five MPIDs. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's website at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

Purpose

To help pay for the costs of regulating EDGA members, the Exchange proposes to establish the following membership fees: (i) an Annual Membership Fee for EDGA members; (ii) a Trading Rights Fee for EDGA members; and (iii) a fee for each MPID approved by EDGA for use by a member firm on EDGA's systems in excess of five. The Exchange believes that each fee is warranted in order to provide for a dedicated source of revenue to be applied toward funding the overall regulation of the Exchange and its members. On July 26, 2011, the Exchange provided its Members with notice about these proposed fees, which would be implemented on September 1, 2011, pending SEC approval.

Annual Membership Fee & Trading Rights Fee

First, EDGA proposes to charge an Annual Membership fee of \$2,000 to each member firm of EDGA which will support their exchange membership for the calendar year. The fee will be charged per member firm. For 2011, the Exchange proposes to charge firms on a pro-rated basis beginning September 1, 2011. Beginning in January

2012, the Exchange plans to charge an Annual Membership Fee which will be assessed on all EDGA members as of a date determined by EDGA in January of each year. For any month in which a firm is approved for membership with the Exchange after the January renewal period, the Annual Membership Fee will be pro-rated beginning on the date on which membership is approved. The pro-rated fee will be calculated based on the remaining trading days in that year, and assessed in the month following membership approval. For example, if a firm applies for membership with the Exchange on or before the close of the January renewal period, and is approved for membership in the same month, the new Member will pay a \$2000 Annual Membership fee. However, if a firm applies and is accepted for membership with the Exchange in February 2012, the new Member will be assessed a pro-rated Annual Membership Fee for the period beginning the first trading day in February in which they are a member through the end of 2012. The fee will be assessed in the next month's billing cycle. In this case, March 2012.

In addition, the fee will not be refundable in the event that the firm ceases to be an EDGA member following the date on which fees are assessed. However, if a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the date any Annual Membership Fee for a given year will be assessed (i.e, September 1, 2011, January 1, 2012, etc.) and the Member does not utilize the facilities of EDGA<sup>3</sup> during such time, then the Member will not be obligated to pay the Annual Membership Fee. For example, if a Member submits a request to terminate their membership prior to close of business on August 31, 2011, the Member will not be charged any Annual Membership Fee regardless of how long it takes for the Member's voluntary termination of membership to become effective. Prior to the September 1, 2011 implementation date

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<sup>3</sup> This would include Members adding, removing, or routing liquidity to EDGA.

for these fee changes only, the Exchange will also waive monthly Trading Rights and MPID fees, as described below, if a Member is pending a voluntary termination of rights pursuant to Rule 2.8 and the Member does not utilize the facilities of EDGA during such time. This waiver of such fees by the Exchange will again occur regardless of how long it takes for the Member's voluntary termination of membership to become effective. The Exchange believes this to be appropriate since ordinarily there is a 30 day waiting period before such resignation shall take effect provided the conditions provided for in Rule 2.8 are satisfied.<sup>4</sup>

Second, EDGA proposes to charge member firms a monthly Trading Rights Fee of \$300 per month for the ability to trade on the EDGA Exchange. Firms will be charged per month, regardless of the volume of shares traded. For any month in which a firm is approved for membership with the Exchange, the monthly Trading Rights Fee will be pro-rated beginning on the date on which membership is approved. The pro-rated fee will be calculated based on the remaining trading days in that month. In any month in which the firm terminates membership with the Exchange, the monthly Trading Rights Fee will be pro-rated based on the number of trading days which have elapsed in that month. The Exchange plans to implement the Trading Rights Fee and charge firms directly beginning September 1, 2011.

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<sup>4</sup> These conditions include: (i) the Exchange's receipt of such written resignation; (ii) the member's having satisfied all outstanding indebtedness due the Exchange; (iii) any Exchange investigation or disciplinary action brought against the Member having reached a final disposition; and (iv) any examination of such Member in process having been completed, and all exceptions arising out of such examination having been satisfactorily resolved.

EDGA believes that even with these proposed fees, the cost of EDGA membership is generally lower than the cost of membership in other SROs.<sup>5</sup>

#### Market Participant Identifier (“MPID”) Fee

An MPID is a four character identifier that is approved by the Exchange and assigned to the member firm for use on the EDGX exchange to identify the firm on the orders sent to the Exchange and resulting executions. Many member firms request the use of one MPID as the identifier for their exchange transactions. However, a member firm may request additional MPIDs for use by separate business units and trading desks or to support sponsored access participants. EDGX notes that certain member firms possess many underutilized MPIDs through which very little or no activity occurs. These unused or underutilized MPIDs provide negligible benefit to the market, yet represent an administrative and regulatory burden to EDGX. In order to address the burden of administering and supporting multiple MPIDs for member firms, EDGX proposes to assess a monthly fee of \$250 per month beginning September 1, 2011 for each MPID approved by the Exchange for use by a member firm on EDGX’s systems in excess of five MPIDs. The MPID Fee will be assessed on a pro-rated basis by charging the firm based on the trading day in the month during which an MPID greater than five becomes

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<sup>5</sup> See, e.g., NASDAQ OMX Group, Inc., Equity Rule 7001, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F4&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Fdequityrules%2F> (assessing an \$3,000 annual membership fee and \$500 per month trading rights fee on members); New York Stock Exchange Price List 2011, at [http://www.nyse.com/pdfs/nyse\\_equities\\_pricelist.pdf](http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf) (assessing a \$40,000 annual trading license fee for the first two licenses held by a member organization, among other itemized regulatory and trading rights fees); Chicago Stock Exchange Fees and Assessments, at [http://www.chx.com/content/Participant\\_Information/Downloadable\\_Docs/Rules/CHX\\_Fee\\_Schedule\\_04252011.pdf](http://www.chx.com/content/Participant_Information/Downloadable_Docs/Rules/CHX_Fee_Schedule_04252011.pdf) (assessing a \$7,200 annual trading permit fee).

effective for use. If the MPID is terminated within a month, the MPID Fee will be charged in full regardless of the number of trading days elapsed or remaining in that month. The Exchange believes that this practice is appropriate because of the administrative costs associated with disabling MPIDs. The Exchange also believes that assessing a fee on supplemental MPIDs will benefit the markets and investors because such fee will promote efficiency in MPID use.

The Exchange notes that NASDAQ currently assesses a Supplemental MPID Fee of \$1,000 per month, per MPID, for any MPID in excess of one. Similarly, the New York Stock Exchange (“NYSE”) charges fees for access to its floor which are analogous to the proposed MPID fee. The NYSE fees are based on the number of individuals that a member firm wishes to employ on the floor of the exchange and include, among other things, an annual fee of \$40,000 per trading license per floor broker, a \$5,000 annual fee per handheld device used on the floor, and a \$250 annual badge maintenance fee per badge. Under the proposed MPID Fee schedule, EDGA member firms would not be charged for maintaining five or less MPIDs, but would pay the proposed \$250 monthly MPID fee only if the member maintains more than five MPIDS. In addition, members would be charged a proposed \$2,000 annual membership fee and trading rights fee of \$300 per month, totaling \$5,600 annually.<sup>6</sup> Thus, EDGA believes that even with the proposed MPID fee, the cost of EDGA membership is generally lower than the cost of membership in other SROs.

#### Basis

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<sup>6</sup> See supra note 5 (explaining the fee structure of the NASDAQ OMX Group, Inc., the New York Stock Exchange, and the Chicago Stock Exchange).

EDGX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, because 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 that EDGX operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

First, the Exchange believes that assessing an Annual Membership Fee and a Trading Rights Fee provides an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients. EDGX believes the Annual Membership Fee and monthly Trading Rights Fee are a reasonable and equitable method of ensuring that its fees fund a greater portion of the cost of regulating the EDGX market, and that even after assessing these fees, the overall cost of EDGX membership is reasonable as compared with the costs of membership in other SROs.

Second, with respect to MPID fees, member firms will continue to have discretion to request EDGX approval to use additional MPIDs on EDGX. Use of more than five MPIDs is voluntary and solely determined by the member firm's needs. The Exchange believes that charging for more than five MPIDs is reasonable given that other exchanges charge members for having more than one MPID.<sup>9</sup> The proposed Market Participant

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> See, e.g., NASDAQ OMX Group, Inc., Equity Rule 7001, at <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F4&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Deq>

Identifier Fee will be imposed on all member firms equally based on the number of MPIDs approved for use on EDGX. EDGX also believes that the proposed fee will encourage efficiency in member firm's use of MPIDs.

Further, the market for transaction execution and routing services is highly competitive. Broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organizations markets, as well as broker-dealers and aggregators such as electronic communications networks. A member firm is able to select any venue of which it is a member or participant to send its order flow. As such, if member firms believe that the proposed (i) annual membership fee, (ii) trading rights fee, or (iii) fee for MPIDs in excess of five, is excessive they may easily choose to move their order flow elsewhere. EDGX believes that its proposed fees are comparable to, and lower than, analogous NASDAQ and NYSE fees.

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.

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[uityrules%2F](#) (assessing a Supplemental MPID Fee of \$1,000 per month, per MPID, for any MPID in excess of one).



### 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 Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2011-26 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-EDGX-2011-26. This file number should be included on the subject line if e-mail is used. To help the Commission

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 19b-4(f)(2).

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 inspection and copying in the Commission's Public Reference Room. 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-EDGX-2011-26 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**  
**Additions underlined**  
**Deletions [bracketed]**

**EDGX Exchange Fee Schedule - Effective [August] September 1, 2011**

\* \* \* \* \*

Membership Fees

The following fees are effective September 1, 2011:

<u>Membership Fee Type</u>	<u>Tier Details</u>	<u>Fee Period</u>	<u>Proposed Fee</u>
<u>Firm Membership</u>	<u>N/A</u>	<u>Annual<sup>1</sup></u>	<u>\$2,000</u>
<u>Trading Rights</u>	<u>N/A</u>	<u>Monthly<sup>2</sup></u>	<u>\$300</u>
<u>MPID Fee – Tier 1</u>	<u>0 to 5 MPIDs</u>	<u>Monthly</u>	<u>\$0</u>
<u>MPID Fee – Tier 2</u>	<u>More than 5 MPIDs</u>	<u>Monthly<sup>3</sup></u>	<u>\$250</u>

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<sup>1</sup> If a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the date any Annual Membership Fee for a given year will be assessed (i.e, September 1, 2011, January 1, 2012, etc.) and the Member does not utilize the facilities of EDGX during such time, then the Member will not be obligated to pay the Annual Membership Fee.

<sup>2</sup> Prior to the September 1, 2011 implementation date for these fee changes, the Exchange will waive monthly Trading Rights fees if a Member is pending a voluntary termination of rights pursuant to Rule 2.8.

<sup>3</sup> Prior to the September 1, 2011 implementation date for these fee changes, the Exchange waive monthly MPID fees if a Member is pending a voluntary termination of rights pursuant to Rule 2.8.