

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of \* 24

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2012 - \* 46

Amendment No. (req. for Amendments \*)

Proposed Rule Change by EDGA Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \*



Amendment \*



Withdrawal



Section 19(b)(2) \*



Section 19(b)(3)(A) \*



Section 19(b)(3)(B) \*



Rule

Pilot

Extension of Time Period  
for Commission Action \*

Date Expires \*



19b-4(f)(1)



19b-4(f)(2)



19b-4(f)(3)



19b-4(f)(4)



19b-4(f)(5)



19b-4(f)(6)



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

EDGA Exchange, Inc. ("Exchange" or "EDGA") proposes to amend its fees and rebates applicable to Members of the Exchange pursuant to EDGA Rule 15.1(a) and (c).

**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 \* Jeffrey

Last Name \* Rosenstock

Title \* General Counsel

E-mail \* jrosenstock@directedge.com

Telephone \* (201) 942-8295

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 11/01/2012

By Jeffrey S. Rosenstock

(Name \*)

General Counsel

(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.

jrosenstock@directedge.com

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

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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

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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) EDGA Exchange, Inc. (“Exchange” or “EDGA”) proposes to amend its fees and rebates applicable to Members<sup>1</sup> of the Exchange pursuant to EDGA Rule 15.1(a) and (c). Text of the proposed rule change is attached as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on April 27, 2010. Exchange staff will advise the Exchange’s Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Thomas N. McManus  
Chief Regulatory Officer  
EDGA Exchange  
201-418-3471

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

(a) Purpose

In Footnote 8 of the fee schedule that is appended to Flag SW, the Exchange proposes to assess a fee of \$0.0025 per share in lieu of the current fee of \$0.0023 per share for Members’ orders that are routed using the SWPA, SWPB or SWPC routing strategies<sup>2</sup> and remove liquidity from the New York Stock Exchange (“NYSE”), yielding Flag D. This 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 NYSE, in response to the pricing changes in NYSE’s filing with the Securities and Exchange Commission (“SEC”).<sup>3</sup> Accordingly, the Exchange proposes to delete the reference to the fee of \$0.0023 per

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<sup>1</sup> As defined in Exchange Rule 1.5(n).

<sup>2</sup> As defined in Exchange Rules 11.9(b)(3)(o), (p) and (q).

<sup>3</sup> See Securities Exchange Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR-NYSE-2012-50).

share in Footnote 8 because the rate for Flag D is \$0.0025 per share. Therefore, the Exchange will assess a charge of \$0.0025 for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies and remove liquidity from NYSE, yielding Flag D.

In Footnote 3 of the fee schedule that is appended to Flags C, D, J, L and 2, the Exchange proposes to assess a fee of 0.30% of the dollar value of the transaction in lieu of the current fee of \$0.0023 per share for stocks priced below \$1.00 that are routed or re-routed to NYSE and remove liquidity, yielding Flag D.<sup>4</sup> This proposed change now represents a pass-through of the rate that DE Route is charged for routing orders to NYSE that remove liquidity.<sup>5</sup>

On Flag RS, the Exchange proposes to offer a rebate of \$0.0026 per share<sup>6</sup> in lieu of the current rebate of \$0.0016 per share for orders that are routed to the Nasdaq OMX PSX ("PSX") and add liquidity. This proposed change represents a pass-through of the rebate that DE Route receives for routing orders to PSX, in response to recent pricing changes in PSX's filing with the SEC.<sup>7</sup>

Currently, the Exchange charges Members a rate of \$0.0027 per share for orders that are routed to PSX using the ROUC or ROUE routing strategies,<sup>8</sup> yielding Flag K. The Exchange proposes to increase the rate to \$0.0028 per share for orders that yield Flag K in response to recent pricing changes in PSX's filing with the SEC.<sup>9</sup>

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<sup>4</sup> The Exchange does not propose to amend the rates for stocks priced below \$1.00 that are routed to Nasdaq OMX BX ("BX") or NASDAQ, yielding Flags C, J, L and 2, as described in Footnote 3 of the fee schedule.

<sup>5</sup> Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) \$0.0023 per share. See Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than \$1.00 is now 0.3% of the total dollar value of the transaction.

<sup>6</sup> The Exchange notes that it is passing through the standard rebate of \$0.0026 per share even though it possibly can achieve a tiered rebate of \$0.0028 per share if it meets certain criteria.

<sup>7</sup> See Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR-PHLX-2012-119).

<sup>8</sup> As defined in Exchange Rules 11.9(b)(3)(a) and (c).

<sup>9</sup> See Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR-PHLX-2012-119).

The Exchange proposes adding the title “EdgeBook Depth Fees” to the fee schedule describing the fees for the EdgeBook Depth A to increase the transparency of the fee schedule for Members.

The Exchange proposes to implement these amendments to its fee schedule on November 1, 2012.

(b) Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Securities and Exchange Act of 1934 (the “Act”),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, as the proposed rule changes are designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange’s Members and other persons using its facilities.

The proposed rate change in Footnote 8 associated with routing orders to NYSE through DE Route on the Exchange’s fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange’s proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, in Footnote 8, for orders yielding Flag D that use the SWPA, SWPB, or SWPC routing strategies and remove liquidity from NYSE, NYSE charged DE Route a fee of \$0.0023 per share, which, in turn, was passed through to the Exchange. The Exchange, in turn, charged its Members a fee of \$0.0023 per share as a pass-through. On October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from \$0.0023 per share to a charge of \$0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 8 from a fee of \$0.0023 per share to a fee of \$0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change in Footnote 3 associated with routing orders to NYSE through DE Route now represents a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange’s proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. For stocks priced below \$1.00 that are routed or re-routed to NYSE and

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

remove liquidity, DE Route charged its Members a fee of \$0.0023 per share.<sup>12</sup> NYSE modified the rate it charged its customers, such as DE Route, effective March 2012, to a charge of 0.30% of the dollar value of the transaction<sup>13</sup> for stocks priced below \$1.00 that remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 3 from a fee of \$0.0023 per share to a fee of 0.30% of the dollar value of the transaction is equitable and reasonable because it allows the Exchange to now charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change for Flag RS associated with routing orders to PSX through DE Route on the Exchange's fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange 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. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag RS, PSX offers DE Route a rebate of \$0.0016 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, offers its Members a rebate of \$0.0016 per share as a pass-through. On October 1, 2012, PSX increased the rebate it offers its customers, such as DE Route, from \$0.0016 per share to a rebate of \$0.0026 per share<sup>14</sup> for orders that are routed to PSX and add liquidity. Therefore, the Exchange believes that the proposed change for Flag RS from a rebate of \$0.0016 per share to a rebate of \$0.0026 per share is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through of the standard rebate<sup>15</sup> for orders that are routed to PSX and add liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

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<sup>12</sup> Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) \$0.0023 per share. See Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than \$1.00 is now 0.3% of the total dollar value of the transaction.

<sup>13</sup> Id.

<sup>14</sup> The Exchange notes that it is passing through the standard rebate of \$0.0026 per share even though it possibly can achieve a tiered rebate of \$0.0028 per share if it meets certain criteria.

<sup>15</sup> Id.

The Exchange believes that its proposal to amend the rate for Flag K represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. DE Route is charged either a fee of \$0.0028 per share or \$0.0030 per share depending on the routing strategy employed.<sup>16</sup> Because the Exchange does not distinguish between ROUC and ROUE when yielding Flag K, the Exchange proposes to assess a charge of \$0.0028 per share for Members orders that are routed to PSX using either ROUC or ROUE, which represents the more favorable of the two rates for its Members. The Exchange's proposal to offer its Members the more favorable of two rates is also equitable because it is similar to the rates associated with Flag C, where the Exchange offers Members the more favorable rebate of \$0.0014 per share for orders routed to BX that remove liquidity regardless of whether the Member achieves the tiered volume necessary to exceed the default rebate of \$0.0005 per share.<sup>17</sup> In addition, the rate of \$0.0028 per share for Flag K is also reasonable because it is similar to the rates charged by PSX for orders routed to its exchange, where PSX assesses charges between \$0.0028 per share and \$0.0030 per share depending on the routing strategy employed.<sup>18</sup> Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange's proposal to add the title "EdgeBook Depth Fees" to the fee schedule increases transparency on the fee schedule for Members and does not represent any change in EdgeBook Depth fees.

The Exchange also 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 and non-discriminatory 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.

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

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

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<sup>16</sup> See NASDAQ OMX PSX, Price List – Trading and Connectivity, [http://www.nasdaqtrader.com/Trader.aspx?id=PSX\\_pricing](http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing).

<sup>17</sup> See Securities Exchange Release No. 67980 (October 4, 2012), 77 FR 61800 (October 11, 2012) (SR-EDGA-2012-45).

<sup>18</sup> See NASDAQ OMX PSX, Price List – Trading and Connectivity, [http://www.nasdaqtrader.com/Trader.aspx?id=PSX\\_pricing](http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing).

5. 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.

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 Act.

(b) This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>19</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>20</sup>

(c) Inapplicable.

(d) Inapplicable.

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

This proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).



## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGA-2012-46)

[Date]

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

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 November 1, 2012, 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 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 Members<sup>3</sup> of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet website at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

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

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

<sup>3</sup> As defined in Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In Footnote 8 of the fee schedule that is appended to Flag SW, the Exchange proposes to assess a fee of \$0.0025 per share in lieu of the current fee of \$0.0023 per share for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies<sup>4</sup> and remove liquidity from the New York Stock Exchange ("NYSE"), yielding Flag D. This 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 NYSE, in response to the pricing changes in NYSE's filing with the Securities and Exchange Commission ("SEC").<sup>5</sup> Accordingly, the Exchange proposes to delete the reference to the fee of \$0.0023 per share in Footnote 8 because the rate for Flag D is \$0.0025 per share. Therefore, the Exchange will assess a charge of \$0.0025 for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies and remove liquidity from NYSE, yielding Flag D.

In Footnote 3 of the fee schedule that is appended to Flags C, D, J, L and 2, the Exchange proposes to assess a fee of 0.30% of the dollar value of the transaction in lieu of the current fee

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<sup>4</sup> As defined in Exchange Rules 11.9(b)(3)(o), (p) and (q).

<sup>5</sup> See Securities Exchange Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR-NYSE-2012-50).

of \$0.0023 per share for stocks priced below \$1.00 that are routed or re-routed to NYSE and remove liquidity, yielding Flag D.<sup>6</sup> This proposed change now represents a pass-through of the rate that DE Route is charged for routing orders to NYSE that remove liquidity.<sup>7</sup>

On Flag RS, the Exchange proposes to offer a rebate of \$0.0026 per share<sup>8</sup> in lieu of the current rebate of \$0.0016 per share for orders that are routed to the Nasdaq OMX PSX (“PSX”) and add liquidity. This proposed change represents a pass-through of the rebate that DE Route receives for routing orders to PSX, in response to recent pricing changes in PSX’s filing with the SEC.<sup>9</sup>

Currently, the Exchange charges Members a rate of \$0.0027 per share for orders that are routed to PSX using the ROUC or ROUE routing strategies,<sup>10</sup> yielding Flag K. The Exchange proposes to increase the rate to \$0.0028 per share for orders that yield Flag K in response to recent pricing changes in PSX’s filing with the SEC.<sup>11</sup>

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<sup>6</sup> The Exchange does not propose to amend the rates for stocks priced below \$1.00 that are routed to Nasdaq OMX BX (“BX”) or NASDAQ, yielding Flags C, J, L and 2, as described in Footnote 3 of the fee schedule.

<sup>7</sup> Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) \$0.0023 per share. See Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than \$1.00 is now 0.3% of the total dollar value of the transaction.

<sup>8</sup> The Exchange notes that it is passing through the standard rebate of \$0.0026 per share even though it possibly can achieve a tiered rebate of \$0.0028 per share if it meets certain criteria.

<sup>9</sup> See Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR-PHLX-2012-119).

<sup>10</sup> As defined in Exchange Rules 11.9(b)(3)(a) and (c).

<sup>11</sup> See Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR-PHLX-2012-119).

The Exchange proposes adding the title “EdgeBook Depth Fees” to the fee schedule describing the fees for the EdgeBook Depth A to increase the transparency of the fee schedule for Members.

The Exchange proposes to implement these amendments to its fee schedule on November 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</sup> in particular, as the proposed rule changes are designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange’s Members and other persons using its facilities.

The proposed rate change in Footnote 8 associated with routing orders to NYSE through DE Route on the Exchange’s fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange’s proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, in Footnote 8, for orders yielding Flag D that use the SWPA, SWPB, or SWPC routing strategies and remove liquidity from NYSE, NYSE charged DE Route a fee of \$0.0023 per share, which, in turn, was passed through to the Exchange. The Exchange, in turn, charged its Members a fee of \$0.0023 per share as a pass-

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

through. On October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from \$0.0023 per share to a charge of \$0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 8 from a fee of \$0.0023 per share to a fee of \$0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change in Footnote 3 associated with routing orders to NYSE through DE Route now represents a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. For stocks priced below \$1.00 that are routed or re-routed to NYSE and remove liquidity, DE Route charged its Members a fee of \$0.0023 per share.<sup>14</sup> NYSE modified the rate it charged its customers, such as DE Route, effective March 2012, to a charge of 0.30%

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<sup>14</sup> Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) \$0.0023 per share. See Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than \$1.00 is now 0.3% of the total dollar value of the transaction.

of the dollar value of the transaction<sup>15</sup> for stocks priced below \$1.00 that remove liquidity.

Therefore, the Exchange believes that the proposed change in Footnote 3 from a fee of \$0.0023 per share to a fee of 0.30% of the dollar value of the transaction is equitable and reasonable because it allows the Exchange to now charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change for Flag RS associated with routing orders to PSX through DE Route on the Exchange's fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange 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. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag RS, PSX offers DE Route a rebate of \$0.0016 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, offers its Members a rebate of \$0.0016 per share as a pass-through. On October 1, 2012, PSX increased the rebate it offers its customers, such as DE Route, from \$0.0016 per share to a rebate of \$0.0026 per share<sup>16</sup> for orders that are routed to PSX and add liquidity. Therefore, the Exchange believes that the proposed change for Flag RS from a rebate of \$0.0016 per share to a rebate of \$0.0026 per share is equitable and reasonable because it

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<sup>15</sup> Id.

<sup>16</sup> The Exchange notes that it is passing through the standard rebate of \$0.0026 per share even though it possibly can achieve a tiered rebate of \$0.0028 per share if it meets certain criteria.

accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through of the standard rebate<sup>17</sup> for orders that are routed to PSX and add liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to amend the rate for Flag K represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. DE Route is charged either a fee of \$0.0028 per share or \$0.0030 per share depending on the routing strategy employed.<sup>18</sup> Because the Exchange does not distinguish between ROUC and ROUE when yielding Flag K, the Exchange proposes to assess a charge of \$0.0028 per share for Members orders that are routed to PSX using either ROUC or ROUE, which represents the more favorable of the two rates for its Members. The Exchange's proposal to offer its Members the more favorable of two rates is also equitable because it is similar to the rates associated with Flag C, where the Exchange offers Members the more favorable rebate of \$0.0014 per share for orders routed to BX that remove liquidity regardless of whether the Member achieves the tiered volume necessary to exceed the default rebate of \$0.0005 per share.<sup>19</sup> In addition, the rate of \$0.0028 per share for Flag K is also reasonable because it is similar to the rates charged by PSX for orders routed to its exchange, where PSX assesses charges between \$0.0028 per share and \$0.0030 per share depending on the routing strategy

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<sup>17</sup> Id.

<sup>18</sup> See NASDAQ OMX PSX, Price List – Trading and Connectivity, [http://www.nasdaqtrader.com/Trader.aspx?id=PSX\\_pricing](http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing).

<sup>19</sup> See Securities Exchange Release No. 67980 (October 4, 2012), 77 FR 61800 (October 11, 2012) (SR-EDGA-2012-45).

employed.<sup>20</sup> Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange's proposal to add the title "EdgeBook Depth Fees" to the fee schedule increases transparency on the fee schedule for Members and does not represent any change in EdgeBook Depth fees.

The Exchange also 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 and non-discriminatory 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.

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<sup>20</sup> See NASDAQ OMX PSX, Price List – Trading and Connectivity, [http://www.nasdaqtrader.com/Trader.aspx?id=PSX\\_pricing](http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing).



### 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 Act<sup>21</sup> and Rule 19b-4(f)(2)<sup>22</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 Number SR-EDGA-2012-46 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-2012-46. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 19b-4(f)(2).

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 10:00 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-2012-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

Additions underlined

Deletions [bracketed]

EDGA Exchange Fee Schedule – Effective [October] November 1, 2012

Download in pdf format.

Rebates & Charges for Adding, Removing or Routing Liquidity per Share for Tape A, B, & C Securities<sup>1,a,b,d</sup>:  
Rebates indicated by parentheses ( )

Footnotes provide further explanatory text or, where annotated to flags, indicate variable rate changes, provided the conditions in the footnote are met

Category	Adding Liquidity	Removing Liquidity	Routing Liquidity
Securities at or above \$1.00	\$0.0006 <sup>4</sup>	\$(0.0004) <sup>1,a</sup>	\$0.0029
Securities below \$1.00	FREE	FREE <sup>1,a</sup>	0.30% of Dollar Value <sup>3,a</sup>

### Liquidity Flags and Associated Fees:

*Unless otherwise noted, the following rebates and fees apply to orders in securities priced \$1 and over.*

Flag	Description	Fee/(Rebate)
A	Routed to NASDAQ, adds liquidity	(0.0020)
B <sup>4</sup>	Add liquidity to EDGA book (Tape B)	0.0006
C <sup>3, a</sup>	Routed to BX, removes liquidity	(0.0014)
D <sup>3,a</sup>	Routed or re-routed to NYSE, removes liquidity	0.0025

<b>F</b>	<b>Routed to NYSE, adds liquidity</b>	<b>(0.0015)</b>
<b>G</b>	<b>Routed to NYSE Arca (Tapes A &amp; C), removes liquidity</b>	<b>0.0030</b>
<b>I</b>	<b>Routed to EDGX</b>	<b>0.0029</b>
<b>J<sup>3,a</sup></b>	<b>Routed to NASDAQ, removes liquidity</b>	<b>0.0030</b>
<b>K</b>	<b>Routed to PSX using ROUC or ROUE routing strategy</b>	<b>[0.0027]0.0028</b>
<b>L<sup>3</sup></b>	<b>Routed to NASDAQ using INET routing strategy, removes liquidity (Tapes A &amp; C)</b>	<b>0.0030</b>
<b>M<sup>a</sup></b>	<b>Add liquidity on LavaFlow</b>	<b>(0.0024)</b>
<b>N<sup>1,a</sup></b>	<b>Remove liquidity from EDGA book (Tape C)</b>	<b>(0.0004)</b>
<b>O<sup>5,a</sup></b>	<b>Routed to primary exchange's opening cross</b>	<b>0.0005</b>
<b>P</b>	<b>Adds liquidity on EDGX, including pre &amp; post market</b>	<b>(0.0027)</b>
<b>Q<sup>16</sup></b>	<b>Routed using ROUQ or ROUC routing strategy and executes at non-exchange destinations</b>	<b>0.0020</b>
<b>R</b>	<b>Re-routed by exchange</b>	<b>0.0030</b>
<b>S</b>	<b>Directed ISO order</b>	<b>0.0032</b>
<b>T</b>	<b>Routed using ROUD/ROUE routing strategy</b>	<b>0.0012</b>
<b>U<sup>6,a</sup></b>	<b>Remove liquidity from LavaFlow</b>	<b>0.0029</b>
<b>V<sup>4</sup></b>	<b>Add liquidity to EDGA book (Tape A)</b>	<b>0.0006</b>
<b>W<sup>1,a</sup></b>	<b>Remove liquidity from EDGA book (Tape A)</b>	<b>(0.0004)</b>
<b>X</b>	<b>Routed</b>	<b>0.0029</b>
<b>Y<sup>4</sup></b>	<b>Add liquidity to EDGA book (Tape C)</b>	<b>0.0006</b>
<b>Z</b>	<b>Routed using ROUZ routing strategy</b>	<b>0.0010</b>
<b>2<sup>3</sup></b>	<b>Routed to NASDAQ using INET routing strategy, removes liquidity (Tape B)</b>	<b>0.0030</b>
<b>3<sup>4</sup></b>	<b>Add liquidity – pre &amp; post market (Tapes A or C)</b>	<b>0.0006</b>
<b>4<sup>4</sup></b>	<b>Add liquidity – pre &amp; post market (Tape B)</b>	<b>0.0006</b>
<b>5</b>	<b>Internalization – pre &amp; post market, per side</b>	<b>0.0001</b>
<b>6<sup>1,a</sup></b>	<b>Remove liquidity – pre &amp; post market (All Tapes)</b>	<b>(0.0004)</b>
<b>7</b>	<b>Routed – pre &amp; post market</b>	<b>0.0027</b>
<b>8</b>	<b>Routed to NYSE Amex, adds liquidity</b>	<b>(0.0015)</b>
<b>9</b>	<b>Routed to NYSE Arca, adds liquidity (Tapes A or C)</b>	<b>(0.0021)</b>

<b>10</b>	<b>Routed to NYSE Arca, adds liquidity (Tape B)</b>	<b>(0.0022)</b>
<b>BB<sup>1,a</sup></b>	<b>Remove liquidity from EDGA book (Tape B)</b>	<b>(0.0004)</b>
<b>BY<sup>12</sup></b>	<b>Routed to BATS BYX Exchange, removes liquidity (using routing strategies ROUC, ROUE, ROBY, ROBB, or ROCO)</b>	<b>(0.0002)</b>
<b>CL<sup>9</sup></b>	<b>Routed to listing market closing process, except NYSE Arca &amp; BATS BZX</b>	<b>0.0010</b>
<b>CR<sup>1,13</sup></b>	<b>Remove liquidity from EDGA using eligible routing strategies</b>	<b>(0.0004)</b>
<b>DM</b>	<b>Non-Displayed Orders, adds liquidity (using Mid Point Discretionary order type)</b>	<b>0.0005</b>
<b>DT</b>	<b>Non-Displayed Orders, removes liquidity (using Mid Point Discretionary order type)</b>	<b>0.0005</b>
<b>EA</b>	<b>Internalization, adds liquidity</b>	<b>0.0001</b>
<b>ER</b>	<b>Internalization, removes liquidity</b>	<b>0.0001</b>
<b>HA<sup>a,2</sup></b>	<b>Non-Displayed Orders, adds liquidity</b>	<b>0.0010</b>
<b>HR<sup>a,2</sup></b>	<b>Non-Displayed Orders, removes liquidity</b>	<b>0.0010</b>
<b>MT</b>	<b>Routed to EDGX MPM using ICMT, IOCM, ROCO or ROUC routing strategies</b>	<b>0.0012</b>
<b>OO</b>	<b>Direct Edge Opening</b>	<b>FREE</b>
<b>PA</b>	<b>Mid Point Routing Strategy (RMPT), adds liquidity</b>	<b>0.0008</b>
<b>PR<sup>1,15</sup></b>	<b>Removes liquidity from EDGA using eligible routing strategies</b>	<b>(0.0004)</b>
<b>PT<sup>17</sup></b>	<b>Mid Point Routing Strategy (RMPT), removes liquidity</b>	<b>0.0010</b>
<b>PX<sup>17</sup></b>	<b>Mid Point Routing Strategy (RMPT), routed out</b>	<b>0.0012</b>
<b>RB</b>	<b>Routed to BX, adds liquidity</b>	<b>0.0018</b>
<b>RC</b>	<b>Routed to NSX, adds liquidity</b>	<b>(0.0026)</b>
<b>RP</b>	<b>Non-Displayed Orders, adds liquidity (using Route Peg Order)</b>	<b>0.0005</b>
<b>RR</b>	<b>Routed to EDGX using routing strategies IOCX or IOCT, removes liquidity</b>	<b>0.0029</b>
<b>RS</b>	<b>Routed to PSX, adds liquidity</b>	<b>[(0.0016)](0.0026)</b>
<b>RT<sup>10</sup></b>	<b>Routed using the ROUT or ROOC routing strategy</b>	<b>0.0025</b>
<b>RW</b>	<b>Routed to CBSX, adds liquidity</b>	<b>0.0017</b>
<b>RX<sup>11</sup></b>	<b>Routed using the ROUX routing strategy</b>	<b>0.0027</b>

<b>RY</b>	<b>Routed to BATS BYX, adds liquidity</b>	<b>0.0003</b>
<b>RZ</b>	<b>Routed to BATS BZX, adds liquidity</b>	<b>(0.0025)</b>
<b>SW<sup>8</sup></b>	<b>Routed using SWPA/SWPB/SWPC routing strategies (except for removal of liquidity from NYSE)</b>	<b>0.0031</b>
<b>XR<sup>1, 14</sup></b>	<b>Removes liquidity from EDGA using eligible routing strategies</b>	<b>(0.0004)</b>

<sup>1</sup> All removal rates on EDGA are contingent on the attributed MPID adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned minimum will be charged \$0.0030 per share for removing liquidity from EDGA for securities priced \$1.00 and over and 0.20% of dollar value for securities priced less than \$1.00.

<sup>2</sup> Rates for Flags HA and HR are contingent upon Member adding or removing greater than 1,000,000 shares non-displayed(hidden) on a daily basis, measured monthly (yields Flags HA, HR, DM, DT and RP) or Member posting greater than 8,000,000 shares on a daily basis, measured monthly. Members not meeting either minimum will be charged \$0.0030 per share for Flags HA and HR.

<sup>3</sup> Stocks priced below \$1.00 on the NYSE are charged [\$0.0023 per share] 0.30% of the dollar value of the transaction when removing liquidity. Stocks priced below \$1.00 are charged 0.10% of the dollar value of the transaction when routed to BX and removing liquidity in Tapes A, B, & C securities. Stocks priced below \$1.00 are charged 0.30% of the dollar value of the transaction when routed to NASDAQ and removing liquidity in securities on all Tapes.

<sup>4</sup> If a Member, on a daily basis, measured monthly, posts more than 1% of the Total Consolidated Volume (“TCV”) in average daily volume on EDGA, including non-displayed orders that add liquidity, then the Member will be charged \$0.0005 per share for Flags B, V, Y, 3 and 4. TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month prior to the month in which the fees are calculated.

If a Member, on a daily basis, measured monthly, posts more than .25% of the TCV on EDGA, including non-displayed orders that add liquidity, and removes more than .25% of TCV in average daily volume, then the Member will be charged \$0.0005 per share.

<sup>5</sup> Capped at \$10,000 per month per Member.

<sup>6</sup> If Member posts an average of 100,000 shares or more per day using strategy ROLF (yielding Flag M), then said Member’s fee when removing liquidity from LavaFlow decreases to \$0.0023 per share (yielding Flag U).

<sup>7</sup> Intentionally omitted.

<sup>8</sup> Flag D is assigned [and a fee of \$0.0023 per share is assessed] if an SWPA, SWPB, or SWPC routing strategy removes liquidity from NYSE.

<sup>9</sup> A Flag “O” will be yielded and a fee of \$0.0005 per share will be assessed if an order is routed to NYSE Arca & BATS BZX’s closing process.

<sup>10</sup> A Flag “RX” will be yielded and a fee of \$0.0027 per share will be assessed when an order is routed to EDGX Exchange using the ROUT routing strategy.

<sup>11</sup> A Flag “T” will be yielded and a fee of \$0.0030 per share will be assessed when an order is routed to EDGX Exchange.

<sup>12</sup> Stocks priced below \$1.00 are charged \$0.0010 per share.

<sup>13</sup> The eligible routing strategies for Flag CR are ROUT, RDOT, ROUE, ROUC, ROOC, ROCO, IOCT, or ICMT.

<sup>14</sup> The eligible routing strategies for Flag XR are ROUX, RDOX, ROPA, INET, ROBB, ROBY, ROBX, ROBA, SWPA, SWPB, SWPC, ROLF, IOCX, or IOCM.

<sup>15</sup> The eligible routing strategies for Flag PR are ROUZ, ROUD, or ROUQ.

<sup>16</sup> If a Member posts greater than or equal to 0.30% of the TCV in ADV on EDGA and routes 2.5 million shares through the use of Flag Q, then the Member’s rate for Flag Q decreases to \$0.0015 per share. If a Member executes greater than or equal to an average daily volume of 12 million shares using the ROUC routing strategy and yielding Flags C, D, I, K, Q, X, BY, CR and MT, then the Member’s rate for Flag Q decreases to \$0.0015 per share.

If a Member posts greater than or equal to 0.30% of the TCV in ADV on EDGA and routes 5 million shares through the use of Flag Q, then the Member’s rate for Flag Q decreases to \$0.0010 per share.

<sup>17</sup> If a Member executes greater than 2 million shares per day, measured monthly, using routing strategy RMPT (*i.e.*, receiving flags PA, PT and PX), then the Member’s rates for PT and PX are reduced to \$0.0008 per share.

<sup>a</sup> Upon a Member's request, EDGA will aggregate share volume calculations for wholly owned affiliates on a prospective basis.

<sup>b</sup> Trading activity on days when the market closes early does not count toward volume tiers.

<sup>c</sup> Reserved.

<sup>d</sup> A charge of 1% per month on the past due portion of the balance will be assessed on a Member's account that is past due. This fee will begin to accrue on a daily basis for items not paid within the 30 day payment terms until the item is paid in full. Late fees incurred will be included as line items on subsequent invoices.

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EdgeBook Depth Fees:

The fees for the EdgeBook Depth A are as follows:

<b>Delivery</b>	<b>Fee</b>
Internal Distributor	\$500/month
External Distributor	\$2,500/month

A "Distributor" of Exchange data is any entity that receives EdgeBook Depth A directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) ("Internal Distributor") or externally (outside that entity) ("External Distributor"). All Distributors shall execute a Market Data Vendor Agreement with Direct Edge, Inc., acting on behalf of the EDGA Exchange.

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