

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="81"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2015"/> - * <input type="text" value="09"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing 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"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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 action (limit 250 characters, required when Initial is checked *).

EDGX Exchange, Inc. proposes to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed.

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 action.

First Name * <input type="text" value="Chris"/>	Last Name * <input type="text" value="Solgan"/>
Title * <input type="text" value="Regulatory Counsel"/>	
E-mail * <input type="text" value="csolgan@bats.com"/>	
Telephone * <input type="text" value="(646) 856-8723"/>	Fax <input type="text"/>

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.

(Title *)

Date <input type="text" value="02/02/2015"/>	<input type="text" value="Regulatory Counsel"/>
By <input type="text" value="Chris Solgan"/>	<input type="text" value=""/>
(Name *)	

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² EDGX Exchange, Inc. (“EDGX” or the “Exchange”) proposes to amend its fee schedule to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes. The proposed changes to the fee schedule are attached as Exhibit 5 and is available on the Exchange’s website at www.batstrading.com, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange submits the proposed rule change pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. 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 and, therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

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

Eric Swanson
Executive Vice President and
General Counsel
(913) 815-7000

Chris Solgan
Assistant General Counsel
(646) 856-8723

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to amend its fee schedule to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

Technical, Non-Substantive Changes

The Exchange proposes the following technical, non-substantive amendments to its fee schedule regarding its existing market data fees. First, the Exchange proposes to group all fees for its market data products under a section entitled, "Market Data Fees." Second, the Exchange proposes to rename the section entitled "EdgeBook Depth Fees" as the "EDGX Depth" to align with a name change within Rule 13.8 that was recently filed with the Commission.³ Third, the Exchange proposes to amend the name of the section entitled "EdgeBook Attributed Fees" as "EDGX Depth Attributed" to align with the naming convention of the Exchange's other market data products: EDGX Depth, EDGX Top, and EDGX Last Sale. Fourth, the Exchange proposes to relocate the section entitled "EDGX Historical Depth Data" within the new section on market data fees. The Exchange also proposes to replace references to "EdgeBook Depth X" with "EDGX Depth" to align with the name change within Rule 13.8 discussed above.

Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms

³ See Securities Exchange Act Release No. 73989 (January 5, 2015) (SR-EDGX-2014-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Fees).

that relate to the Exchange's market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees.

First, the Exchange proposes to amend and relocate its current definition of a "Distributor" contained in its fee schedule. A Distributor is currently defined as "any entity that receives a market data feed 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 EDGX Exchange, Inc." As amended, a "Distributor" will be defined as "any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party."⁴ In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a "Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity."⁵ An External Distributor will be defined as a "Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity."⁶

⁴ The proposed definition of "Distributor" is similar to Nasdaq Rule 7047(d)(1).

⁵ The proposed definition of "Internal Distributor" is similar to Nasdaq Rule 7047(d)(1)(A).

⁶ The proposed definition of "External Distributor" is similar to Nasdaq Rule 7047(d)(1)(B).

Secondly, the Exchange proposes to add a definition of “User” to its fee schedule. A User will be defined as a “natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.” For purposes of its market data fees, the Exchange will distinguish between “Non-Professional Users” and “Professional Users.” Specifically, a Non-Professional User will be defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.”⁷ A Professional User will be defined as “any User other than a Non-Professional User.”⁸

EDGX Top and EDGX Last Sale

The Exchange will begin to offer two new data feeds that are also identical to data feeds currently available on the BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX” collectively, with BZX, “BATS”): EDGX Last Sale and EDGX Top.⁹

⁷ The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A).

⁸ The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

⁹ See supra note 3. See also BATS Rule 11.22(d) and (g).

EDGX Last Sale will provide real-time, intraday trade information, including price, volume and time of executions based on orders entered into the System.¹⁰ EDGX Last Sale will not include quotation information. EDGX Top will include top of book quotations and last sale execution information based on orders entered into the System. The quotations made available via EDGX Top will provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

The proposed cost of EDGX Last Sale for an Internal Distributor will be \$500 per month. Likewise, the proposed cost of EDGX Top for an Internal Distributor will be \$500 per month. The Exchange does not propose to charge per User fees for either EDGX Last Sale or EDGX Top. Therefore, the Exchange will not require an External Distributor of EDGX Last Sale or EDGX Top to count, classify (*e.g.*, professional or non-professional) or report to the Exchange information regarding the customers to which they provide the data. Instead, the Exchange proposes to charge an External Distributor of EDGX Last Sale a flat fee of \$1,250 per month. The Exchange also proposes to charge an External Distributor of EDGX Top a flat fee of \$1,250 per month. End Users will not have to pay the Exchange for EDGX Last Sale or EDGX Top, nor will end Users be required to enter into contracts with the Exchange. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of EDGX Top or EDGX Last Sale will not be charged a Distributor Fee for their first three (3) months. Subscribers to either EDGX Top or EDGX Last Sale may

¹⁰ The term “System” is defined as “the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(cc).

also receive, upon request and at no additional cost, EDGX Last Sale or EDGX Top, as applicable. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients with respect to EDGX Last Sale and EDGX Top.

BATS One Feed

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed.¹¹ The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on EDGX and its affiliated exchanges¹² and for which the BATS Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.¹³ The BATS One Feed also

¹¹ See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (“BATS One Approval Order”).

¹² EDGX’s affiliated exchanges are BZX, BYX, and EDGA Exchange, Inc. (“EDGA”, together with EDGX, BZX, and BYX, the “BATS Exchanges”). On January 31, 2014, Direct Edge Holdings LLC (“DE Holdings”), the former parent company of the Exchange and EDGA, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX. See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43, SR-EDGA-2014-34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.”

¹³ The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the “BATS One Summary Feed”). In addition, the BATS One Feed contains optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (“BATS One Premium Feed”). For each price level on one of the BATS Exchanges, the BATS One Premium Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.

The Exchange uses the following data feeds to create the BATS One Summary Feed and the BATS One Premium Feed, each of which is available to other vendors: EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, and each of which have been previously published by the Commission.¹⁴ A vendor that wishes to create a product like the BATS One Summary Feed could instead subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale.¹⁵ The BATS Exchanges are the exclusive distributors of these individual data feeds from which certain data elements are taken to create the BATS One Feed as well as the feeds that a vendor may use to create a product like the BATS One Summary Feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and

¹⁴ See Securities Exchange Act Release Nos. 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (SR-EDGX-2012-14); 66863 (April 26, 2012), 77 FR 26059 (May 2, 2012) (SR-EDGA-2012-15); 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39); 69935 (July 3, 2013), 78 FR 47447 (July 10, 2013) (SR-BYX-2013-023). See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

¹⁵ See supra note 3. See also BZX and BYX Rules 11.22(d) and (g).

consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the BATS One Feed would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients.¹⁶

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) the BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees;¹⁷ (ii) Usage Fees for both

¹⁶ See BATS One Approval Order, supra note 11. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. Id.

¹⁷ The Exchange notes that Distributor Fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 7019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

Professional and Non-Professional Users;¹⁸ (iii) Enterprise Fees;¹⁹ and (iv) a Data Consolidation Fee. The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distributor Fees.

Internal Distributor Fees. As proposed, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month. The Exchange also proposes that each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed. The Exchange does not propose to charge any User fees for the BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distributor Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally a fee of \$5,000 per month for the BATS One Summary Feed. As proposed, each External Distributor shall pay a fee of \$12,500 per month where they elect to receive the BATS One Premium Feed.

The BATS One Feed is comprised of data included in EDGX Depth, EDGA

¹⁸ The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by Nasdaq and the New York Stock Exchange, Inc. (“NYSE”). See Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102).

¹⁹ The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. See Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR-NYSE-2013-58); 70010 (July 19, 2013) (File No. SR-CTA/CQ-2013-04).

Depth, BYX Depth, and BZX Depth.²⁰ Currently, an External Distributor could create a competing product to the BATS One Premium Feed²¹ by purchasing the each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$12,500 per month,²² equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,²³ and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,²⁴ equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. To ensure that vendors could compete with

²⁰ See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

²¹ Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

²² The monthly External Distributor fee is \$2,500 per month for EDGX Depth, \$2,500 per month for EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth.

²³ See *supra* note 3. See also BATS Rule 11.22(d) and (g).

²⁴ The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09 and SR-BYX-2015-09. See also the BZX Fee Schedule available at http://www.batstrading.com/support/fee_schedule/bzx/.

the Exchange by creating the same product as the BATS One Feed and selling it to their clients, the Exchange proposes to charge External Distributors an External Distributor fee that equals the combined External Distributor fees for each of the individual feeds listed above.

The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of the BATS One Summary Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.²⁵ The New External Distributor Fee Credit will not be available to External Distributors of the BATS One Premium Feed. The Exchange does not believe the New External Distributor Credit would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to charge those who receive the BATS One Feed from External Distributors different fees

²⁵ The Exchange notes that just as a third party vendor could choose to offer special pricing in order to incentivize data recipients to perform necessary development and other work in order to receive and distribute a new data product, the Exchange has proposed pricing to incentivize data recipients to take and distribute the BATS One Feed.

for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$10.00 per User for receipt of the BATS One Summary Feed or \$15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of \$0.25 per user for the BATS One Summary Feed or \$0.50 per user where they elects to receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.²⁶ Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the

²⁶ Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms who's Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.*, a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a \$12,500 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling \$12,500 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$11,500 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least \$12,500 in connection with the distribution of the BATS One Feed (through a combination of the External Distribution Fee and per User Fees).

Enterprise Fee. The Exchange also proposes to establish a \$50,000 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed

portion of the BATS One Feed from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users and \$100,000 per month for recipient firms who elect to receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Users who each receive the BATS One Summary Feed portion of the BATS One Feed at \$10.00 per month, then that recipient firm will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$50,000 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such User to be covered by an Enterprise Fee rather than by per-User fees. A recipient firms that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. The Enterprise Fee would be in addition to the applicable Distributor Fee.

Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the BATS One Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. As stated above, the Exchange creates the BATS One Feed from data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.²⁷ The Exchange notes that an

²⁷ See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

External Distributor could create a competing product to the BATS One Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes that vendors could readily offer a product similar to the BATS One Feed on a competitive basis at a similar cost.

The Exchange does not propose to charge Internal Distributors the separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month, as compared to \$5,000, which is the total of the underlying feeds.²⁸ Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed, as compared to \$12,500, which is the total cost of the underlying depth feeds.²⁹ The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange does not propose to charge Internal Distributors a separate Data Consolidation Fee.

(b) Statutory Basis

²⁸ See supra note 24.

²⁹ See supra note 22.

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(4),³¹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Technical, Non-Substantive Changes

The Exchange believes that the non-substantive changes to its fee schedule are reasonable because they are designed to align with a previous name change within Rule 13.8 and the naming convention of the Exchange's other market data products: EDGX Depth, the EDGX Top, and EDGX Last Sale. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are reasonable because they

³⁰ 15 U.S.C. 78f.

³¹ 15 U.S.C. 78f(b)(4).

are designed to provide greater transparency to Members with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing rules of the Nasdaq Stock Market LLC (“Nasdaq”).³²

EDGX Top and EDGX Last Sale

The Exchange believes that its proposed fees for EDGX Last Sale and EDGX Top are consistent with Section 6(b)(4) of the Act³³ because they provide for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange also believes the proposed fees for EDGX Last Sale and EDGX Top are reasonable and equitable in light of the benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will offset the Exchange’s fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help the Exchange cover its

³² The proposed definition of “Distributor” is similar to Nasdaq Rule 7047(d)(1). The proposed definition of “Internal Distributor” is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of “External Distributor” is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

³³ 15 U.S.C. 78f(b)(4).

costs in developing and running that platform, as well as ongoing infrastructure costs. EDGX Last Sale and EDGX Top would be distributed and purchased on a voluntary basis, in that neither the Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it will apply uniformly to all Members.

BATS One Feed

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,³⁴ in general, and Section 6(b)(4) of the Act,³⁵ in particular, in that they provide for an equitable allocation of reasonable fees among Users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act³⁶ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,³⁷ which provides that any national securities exchange that distributes information with

³⁴ 15 U.S.C. 78f.

³⁵ 15 U.S.C. 78f(b)(4).

³⁶ 15 U.S.C. 78k-1.

³⁷ See 17 CFR 242.603.

respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fee structure on an equivalent basis. The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available.

Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In addition, any customer that wishes to purchase one or more of the individual data feeds offered by the BATS Exchanges would be able to do so.

The Exchange has taken into consideration its affiliated relationship with EDGA, BYX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to received, the individual data feeds would be able to, if it so chooses, to create a data feed with the same

information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients with no greater cost than the Exchange.³⁸

In addition, vendors and subscribers that do not wish to purchase the BATS One Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed. To enable such competition, the Exchange is offering the BATS One Feed on terms that a subscriber of those underlying feeds could offer a competing product if it so chooses.

The Exchange notes that the use of the BATS One Feed is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own underlying data products, the Nasdaq and the NYSE proprietary data products described in this filing,³⁹ and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the BATS One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory,

³⁸ See BATS One Approval Order, supra note 11. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. Id.

³⁹ See infra note 53.

when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute the BATS One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BATS One Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the BATS One Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the BATS One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.⁴⁰

⁴⁰ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.⁴¹ Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to fees for

continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

⁴¹ See, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of \$26 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$350,000 per month for internal distribution to an unlimited number of professional users or \$365,000 per month for external distribution for up to 16,000 professional users, plus \$2 for each additional professional user over 16,000.⁴² The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT. To obtain BQT, subscribers must purchase the each underlying data feed for a monthly fee of \$18 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. The Exchange's proposed per-User Fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of \$20-\$50 per device, depending on the number of professional subscribers, and \$1.00 per non-professional subscriber, depending on the number of non-professional subscribers.⁴³ A monthly enterprise fee of \$686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited

⁴² See Nasdaq Rule 7047.

⁴³ See CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at <https://cta.nyxdata.com/CTA>.

number of its own employees and its non-professional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for underlying data feeds for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distributor Fee. The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.⁴⁴ The Exchange believes that the Distributor Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distributor fee is higher than those of competitor products, there are no User fees assessed for Users that receive the BATS One Feed data through an Internal Distributor, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer.

The proposed Distributor Fees for the BATS One Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the BATS One Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as it equals the combined fee of subscribing to each individual data feed of the BATS Exchanges, which have been previously published by the Commission.⁴⁵ Currently, an External Distributor that seeks to create a competing product to the BATS One Premium Feed⁴⁶ would need to purchase each of the depth of book products from the

⁴⁴ The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

⁴⁵ See supra notes 13 and 14.

⁴⁶ Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to

individual BATS Exchanges and then perform its own aggregation and consolidation functions.⁴⁷ The combined external distributor fees for these individual depth of book feeds of the BATS Exchanges is \$12,500 per month,⁴⁸ equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could alternatively subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale, and then perform their own aggregation and consolidation function. The combined external distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,⁴⁹ equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. In addition, the Exchange believes it is reasonable to not charge External Distributors a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the

separately purchase the top and last sale feeds from each of the BATS Exchanges.

⁴⁷ As discussed, the Exchange proposes to charge External Distributors a separate Data Consolidation Fee to reflect the value of the consolidation function performed by the Exchange.

⁴⁸ See supra note 22.

⁴⁹ See supra note 24.

same terms as the Exchange.

Data Consolidation Fee

The Exchange believes that the proposed \$1,000 per month Data Consolidation Fee charged to External Distributors who receive the BATS One Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange also notes that its proposed \$1,000 per month Data Consolidation Fee is identical to an access fee charged by the NYSE for BQT, which is also designed to represent the value of the data aggregation function provided by the NYSE in constructing its BQT feed.⁵⁰

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributor who subscribe to the BATS One Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributor a separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month as compared to \$5,000, which is the total of the underlying feeds.⁵¹ Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed as compared to \$12,500, which is the total cost of the

⁵⁰ See Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

⁵¹ See supra note 24.

underlying depth feeds.⁵² The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the BATS One Feed pricing. The Exchange believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing as discussed further below.

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

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

Technical, Non-Substantive Changes

The proposed name changes to EdgeBook and Depth and EdgeBook Attributed

⁵² See supra note 24.

will not result in any burden on competition. The proposed amendments are not designed to address and competitive issues, but rather provide consistency amongst the naming conventions used for the Exchange market data products, resulting in additional clarity and transparency to Members, Users, and the investing public regarding the Exchange's market data products. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion.

Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

EDGX Top and EDGX Last Sale

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGX Last Sale and EDGX Top are constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of

dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGX Last Sale and EDGX Top compete with a number of alternative products. For instance, EDGX Last Sale and EDGX Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGX last sale prices and top-of-book quotations though integrated with the prices of other markets on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product

fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Last Sale and EDGX Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

BATS One Feed

The BATS One Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The BATS One Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.⁵³ As previously stated, the

⁵³ See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market

fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

Although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed BATS One Feed. Any entity that receives, or elects to received, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients and at a similar cost.⁵⁴

The proposed pricing the Exchange would charge clients for the BATS One Feed

center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (“TRF”); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (“BQT”) Data Feed); <http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades> (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

⁵⁴ See BATS One Approval Order, supra note 11.

compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange would charge for the BATS One Feed would not be lower than the cost to a vendor of receiving the underlying data feeds. The pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The Distributor Fees that the Exchange intends to propose for the BATS One Feed would not be less than the combined fee of subscribing to each individual data feed.⁵⁵ In addition, the Exchange believes that not charging External Distributors a Distribution Fee during their first three (3) months would not impede a vendor from creating a competing product. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the

⁵⁵ The combined external distribution fee for the individual depth of book data feeds of the BATS Exchanges is \$12,500 per month. The monthly External Distributor fee is \$2,500 per month for the EDGX Depth, \$2,500 per month for the EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth. The combined external distribution fee for the individual top and last sale data feed of the BATS Exchanges is \$5,000 per month. The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09 and SR-BYX-2015-09. See also the BZX Fee Schedule available at http://www.batstrading.com/support/fee_schedule/bzx/

Exchange in offering such free period and offer a competing product on a similar basis as the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because it is identical to a similar fee charged by the NYSE for its BQT feed and a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. The Exchange believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes the proposed pricing, including the New External Distributor Fee Credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing.

Finally, the Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.⁵⁶ Nasdaq already offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the

⁵⁶ See supra note 53.

BATS One Feed.⁵⁷ The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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

⁵⁷ Id.

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 Act⁵⁸ and paragraph (f)(2) of Rule 19b-4 thereunder.⁵⁹

(c) Inapplicable.

(d) Inapplicable.

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

The proposed definition of “Distributor” is similar to Nasdaq Rule 7047(d)(1).

The proposed definition of “Internal Distributor” is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of “External Distributor” is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

9. Security Based-Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change.

⁵⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁹ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-EDGX-2015-09)

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Fees for EDGX Top, EDGX Last Sale, and the BATS One Feed

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

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

The Exchange filed a proposal to amend its fee schedule to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available at the Exchange's website at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend its fee schedule to establish fees for EDGX Top, EDGX Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

Technical, Non-Substantive Changes

The Exchange proposes the following technical, non-substantive amendments to its fee schedule regarding its existing market data fees. First, the Exchange proposes to group all fees for its market data products under a section entitled, "Market Data Fees." Second, the Exchange proposes to rename the section entitled "EdgeBook Depth Fees" as the "EDGX Depth" to align with a name change within Rule 13.8 that was recently filed

with the Commission.⁵ Third, the Exchange proposes to amend the name of the section entitled “EdgeBook Attributed Fees” as “EDGX Depth Attributed” to align with the naming convention of the Exchange’s other market data products: EDGX Depth, EDGX Top, and EDGX Last Sale. Fourth, the Exchange proposes to relocate the section entitled “EDGX Historical Depth Data” within the new section on market data fees. The Exchange also proposes to replace references to “EdgeBook Depth X” with “EDGX Depth” to align with the name change within Rule 13.8 discussed above.

Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange’s market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees.

First, the Exchange proposes to amend and relocate its current definition of a “Distributor” contained in its fee schedule. A Distributor is currently defined as “any entity that receives a market data feed 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 EDGX Exchange, Inc.” As amended, a “Distributor” will be defined as “any entity

⁵ See Securities Exchange Act Release No. 73989 (January 5, 2015) (SR-EDGX-2014-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Feeds).

that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.”⁶ In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.”⁷ An External Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.”⁸

Secondly, the Exchange proposes to add a definition of “User” to its fee schedule. A User will be defined as a “natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.” For purposes of its market data fees, the Exchange will distinguish between “Non-Professional Users” and “Professional Users.” Specifically, a Non-Professional User will be defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisers Act of

⁶ The proposed definition of “Distributor” is similar to Nasdaq Rule 7047(d)(1).

⁷ The proposed definition of “Internal Distributor” is similar to Nasdaq Rule 7047(d)(1)(A).

⁸ The proposed definition of “External Distributor” is similar to Nasdaq Rule 7047(d)(1)(B).

1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.”⁹ A Professional User will be defined as “any User other than a Non-Professional User.”¹⁰

EDGX Top and EDGX Last Sale

The Exchange will begin to offer two new data feeds that are also identical to data feeds currently available on the BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX” collectively, with BZX, “BATS”): EDGX Last Sale and EDGX Top.¹¹ EDGX Last Sale will provide real-time, intraday trade information, including price, volume and time of executions based on orders entered into the System.¹² EDGX Last Sale will not include quotation information. EDGX Top will include top of book quotations and last sale execution information based on orders entered into the System. The quotations made available via EDGX Top will provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

The proposed cost of EDGX Last Sale for an Internal Distributor will be \$500 per

⁹ The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A).

¹⁰ The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

¹¹ See supra note 5. See also BATS Rule 11.22(d) and (g).

¹² The term “System” is defined as “the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(cc).

month. Likewise, the proposed cost of EDGX Top for an Internal Distributor will be \$500 per month. The Exchange does not propose to charge per User fees for either EDGX Last Sale or EDGX Top. Therefore, the Exchange will not require an External Distributor of EDGX Last Sale or EDGX Top to count, classify (*e.g.*, professional or non-professional) or report to the Exchange information regarding the customers to which they provide the data. Instead, the Exchange proposes to charge an External Distributor of EDGX Last Sale a flat fee of \$1,250 per month. The Exchange also proposes to charge an External Distributor of EDGX Top a flat fee of \$1,250 per month. End Users will not have to pay the Exchange for EDGX Last Sale or EDGX Top, nor will end Users be required to enter into contracts with the Exchange. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of EDGX Top or EDGX Last Sale will not be charged a Distributor Fee for their first three (3) months. Subscribers to either EDGX Top or EDGX Last Sale may also receive, upon request and at no additional cost, EDGX Last Sale or EDGX Top, as applicable. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients with respect to EDGX Last Sale and EDGX Top.

BATS One Feed

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed.¹³ The BATS One Feed

¹³ See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR

is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on EDGX and its affiliated exchanges¹⁴ and for which the BATS Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.¹⁵ The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the “BATS One Summary Feed”). In addition, the BATS One Feed contains optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (“BATS One Premium Feed”). For each price level on one of the BATS Exchanges, the BATS One Premium Feed will include a two-sided quote and the number

78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (“BATS One Approval Order”).

¹⁴ EDGX’s affiliated exchanges are BZX, BYX, and EDGA Exchange, Inc. (“EDGA”, together with EDGX, BZX, and BYX, the “BATS Exchanges”). On January 31, 2014, Direct Edge Holdings LLC (“DE Holdings”), the former parent company of the Exchange and EDGA, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX. See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43, SR-EDGA-2014-34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.”

¹⁵ The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

of shares available to buy and sell at that particular price level.

The Exchange uses the following data feeds to create the BATS One Summary Feed and the BATS One Premium Feed, each of which is available to other vendors: EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, and each of which have been previously published by the Commission.¹⁶ A vendor that wishes to create a product like the BATS One Summary Feed could instead subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale.¹⁷ The BATS Exchanges are the exclusive distributors of these individual data feeds from which certain data elements are taken to create the BATS One Feed as well as the feeds that a vendor may use to create a product like the BATS One Summary Feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the BATS One Feed would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed

¹⁶ See Securities Exchange Act Release Nos. 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (SR-EDGX-2012-14); 66863 (April 26, 2012), 77 FR 26059 (May 2, 2012) (SR-EDGA-2012-15); 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39); 69935 (July 3, 2013), 78 FR 47447 (July 10, 2013) (SR-BYX-2013-023). See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

¹⁷ See supra note 5. See also BZX and BYX Rules 11.22(d) and (g).

would be received by those same clients.¹⁸

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) the BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees;¹⁹ (ii) Usage Fees for both Professional and Non-Professional Users;²⁰ (iii) Enterprise Fees;²¹ and (iv) a Data

¹⁸ See BATS One Approval Order, *supra* note 13. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

¹⁹ The Exchange notes that Distributor Fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

²⁰ The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by Nasdaq and the New York Stock Exchange, Inc. (“NYSE”). See Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102).

²¹ The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. See Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR-NYSE-2013-58); 70010 (July 19, 2013) (File No. SR-CTA/CQ-2013-04).

Consolidation Fee. The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distributor Fees.

Internal Distributor Fees. As proposed, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month. The Exchange also proposes that each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed. The Exchange does not propose to charge any User fees for the BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distributor Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally a fee of \$5,000 per month for the BATS One Summary Feed. As proposed, each External Distributor shall pay a fee of \$12,500 per month where they elect to receive the BATS One Premium Feed.

The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.²² Currently, an External Distributor could create a competing product to the BATS One Premium Feed²³ by purchasing the each of these

²² See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

²³ Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$12,500 per month,²⁴ equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,²⁵ and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,²⁶ equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. To ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed and selling it to their clients, the Exchange proposes to charge External Distributors an External Distributor fee that equals the combined External Distributor fees for each of the individual feeds listed above.

The Exchange also proposes to establish a New External Distributor Credit under

²⁴ The monthly External Distributor fee is \$2,500 per month for EDGX Depth, \$2,500 per month for EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth.

²⁵ See supra note 5. See also BATS Rule 11.22(d) and (g).

²⁶ The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale (as proposed herein), free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09 and SR-BYX-2015-09. See also the BZX Fee Schedule available at http://www.batstrading.com/support/fee_schedule/bzx/.

which new External Distributors of the BATS One Summary Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.²⁷ The New External Distributor Fee Credit will not be available to External Distributors of the BATS One Premium Feed. The Exchange does not believe the New External Distributor Credit would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to charge those who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$10.00 per User for receipt of the BATS One Summary Feed or \$15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of \$0.25 per user for the

²⁷ The Exchange notes that just as a third party vendor could choose to offer special pricing in order to incentivize data recipients to perform necessary development and other work in order to receive and distribute a new data product, the Exchange has proposed pricing to incentivize data recipients to take and distribute the BATS One Feed.

BATS One Summary Feed or \$0.50 per user where they elects to receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.²⁸ Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.*, a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

²⁸ Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms who's Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a \$12,500 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling \$12,500 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$11,500 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least \$12,500 in connection with the distribution of the BATS One Feed (through a combination of the External Distribution Fee and per User Fees).

Enterprise Fee. The Exchange also proposes to establish a \$50,000 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users and \$100,000 per month for recipient firms who elect to receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Users who each receive the BATS One Summary

Feed portion of the BATS One Feed at \$10.00 per month, then that recipient firm will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$50,000 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such User to be covered by an Enterprise Fee rather than by per-User fees. A recipient firms that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. The Enterprise Fee would be in addition to the applicable Distributor Fee.

Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the BATS One Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. As stated above, the Exchange creates the BATS One Feed from data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.²⁹ The Exchange notes that an External Distributor could create a competing product to the BATS One Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the

²⁹ See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

value of the aggregation and consolidation function. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes that vendors could readily offer a product similar to the BATS One Feed on a competitive basis at a similar cost.

The Exchange does not propose to charge Internal Distributors the separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month, as compared to \$5,000, which is the total of the underlying feeds.³⁰ Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed, as compared to \$12,500, which is the total cost of the underlying depth feeds.³¹ The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange does not propose to charge Internal Distributors a separate Data Consolidation Fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the

³⁰ See supra note 26.

³¹ See supra note 24.

objectives of Section 6 of the Act,³² in general, and furthers the objectives of Section 6(b)(4),³³ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Technical, Non-Substantive Changes

The Exchange believes that the non-substantive changes to its fee schedule are reasonable because they are designed to align with a previous name change within Rule 13.8 and the naming convention of the Exchange's other market data products: EDGX Depth, the EDGX Top, and EDGX Last Sale. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are reasonable because they

³² 15 U.S.C. 78f.

³³ 15 U.S.C. 78f(b)(4).

are designed to provide greater transparency to Members with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing rules of the Nasdaq Stock Market LLC (“Nasdaq”).³⁴

EDGX Top and EDGX Last Sale

The Exchange believes that its proposed fees for EDGX Last Sale and EDGX Top are consistent with Section 6(b)(4) of the Act³⁵ because they provide for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange also believes the proposed fees for EDGX Last Sale and EDGX Top are reasonable and equitable in light of the benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will offset the Exchange’s fixed costs of operating and regulating a highly efficient and

³⁴ The proposed definition of “Distributor” is similar to Nasdaq Rule 7047(d)(1). The proposed definition of “Internal Distributor” is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of “External Distributor” is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

³⁵ 15 U.S.C. 78f(b)(4).

reliable platform for the trading of U.S. equities. It will also help the Exchange cover its costs in developing and running that platform, as well as ongoing infrastructure costs. EDGX Last Sale and EDGX Top would be distributed and purchased on a voluntary basis, in that neither the Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it will apply uniformly to all Members.

BATS One Feed

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,³⁶ in general, and Section 6(b)(4) of the Act,³⁷ in particular, in that they provide for an equitable allocation of reasonable fees among Users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act³⁸ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

³⁶ 15 U.S.C. 78f.

³⁷ 15 U.S.C. 78f(b)(4).

³⁸ 15 U.S.C. 78k-1.

Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,³⁹ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fee structure on an equivalent basis. The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In addition, any customer that wishes to purchase one or more of the individual data feeds offered by the BATS Exchanges would be able to do so.

The Exchange has taken into consideration its affiliated relationship with EDGA, BYX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds

³⁹ See 17 CFR 242.603.

from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients with no greater cost than the Exchange.⁴⁰

In addition, vendors and subscribers that do not wish to purchase the BATS One Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed. To enable such competition, the Exchange is offering the BATS One Feed on terms that a subscriber of those underlying feeds could offer a competing product if it so chooses.

The Exchange notes that the use of the BATS One Feed is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own underlying data products, the Nasdaq and the NYSE proprietary data products described in this filing,⁴¹ and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any

⁴⁰ See BATS One Approval Order, supra note 13. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. Id.

⁴¹ See infra note 55.

specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the BATS One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute the BATS One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BATS One Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the BATS One Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the BATS One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.⁴²

⁴² The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees has

analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.⁴³ Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of \$26 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$350,000 per month for internal distribution to an unlimited number of professional users or \$365,000 per month for external distribution for up to 16,000 professional users, plus \$2 for each additional professional user over 16,000.⁴⁴ The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT. To obtain BQT, subscribers must purchase the each underlying data feed for a monthly fee of \$18 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional

⁴³ See, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

⁴⁴ See Nasdaq Rule 7047.

users. The Exchange's proposed per-User Fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of \$20-\$50 per device, depending on the number of professional subscribers, and \$1.00 per non-professional subscriber, depending on the number of non-professional subscribers.⁴⁵ A monthly enterprise fee of \$686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its non-professional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for underlying data feeds for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the

⁴⁵ See CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at <https://cta.nyxdata.com/CTA>.

distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distributor Fee. The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.⁴⁶ The Exchange believes that the Distributor Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distributor fee is higher than those of competitor products, there are no User fees assessed for Users that receive the BATS One Feed data through an Internal Distributor, which results in a net cost that is

⁴⁶ The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

lower than competitor products for many data recipients and will be easier to administer.

The proposed Distributor Fees for the BATS One Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the BATS One Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as it equals the combined fee of subscribing to each individual data feed of the BATS Exchanges, which have been previously published by the Commission.⁴⁷ Currently, an External Distributor that seeks to create a competing product to the BATS One Premium Feed⁴⁸ would need to purchase each of the depth of book products from the individual BATS Exchanges and then perform its own aggregation and consolidation functions.⁴⁹ The combined external distributor fees for these individual depth of book feeds of the BATS Exchanges is \$12,500 per month,⁵⁰ equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could alternatively subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale, and then perform their own aggregation and consolidation function. The combined external distributor fees for

⁴⁷ See supra notes 15 and 16.

⁴⁸ Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

⁴⁹ As discussed, the Exchange proposes to charge External Distributors a separate Data Consolidation Fee to reflect the value of the consolidation function performed by the Exchange.

⁵⁰ See supra note 24.

these individual data feeds of the BATS Exchanges is \$5,000 per month,⁵¹ equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. In addition, the Exchange believes it is reasonable to not charge External Distributors a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

Data Consolidation Fee

The Exchange believes that the proposed \$1,000 per month Data Consolidation Fee charged to External Distributors who receive the BATS One Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange also notes that its proposed \$1,000 per month Data Consolidation Fee is identical to an access fee charged by the NYSE for BQT, which is also designed to represent the value of the data aggregation function provided by the NYSE in constructing its BQT feed.⁵²

⁵¹ See supra note 26.

⁵² See Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributor who subscribe to the BATS One Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributor a separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month as compared to \$5,000, which is the total of the underlying feeds.⁵³ Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed as compared to \$12,500, which is the total cost of the underlying depth feeds.⁵⁴ The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the BATS One Feed pricing. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such

Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

⁵³ See supra note 26.

⁵⁴ See supra note 24.

vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing as discussed further below.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

Technical, Non-Substantive Changes

The proposed name changes to EdgeBook and Depth and EdgeBook Attributed will not result in any burden on competition. The proposed amendments are not designed to address and competitive issues, but rather provide consistency amongst the naming conventions used for the Exchange market data products, resulting in additional clarity and transparency to Members, Users, and the investing public regarding the Exchange's market data products. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion.

Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

EDGX Top and EDGX Last Sale

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGX Last Sale and EDGX Top are constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their

customer order flow.

In addition, EDGX Last Sale and EDGX Top compete with a number of alternative products. For instance, EDGX Last Sale and EDGX Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks (“ECN”) that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGX last sale prices and top-of-book quotations though integrated with the prices of other markets on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange’s compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Last Sale and EDGX Top, including existing

similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

BATS One Feed

The BATS One Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The BATS One Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.⁵⁵ As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is less expensive per professional user and more than 85% less

⁵⁵ See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (“TRF”)); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades (“BQT”) Data Feed); <http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades> (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

Although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed BATS One Feed. Any entity that receives, or elects to received, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients and at a similar cost.⁵⁶

The proposed pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange would charge for the BATS One Feed would not be lower than the cost to a vendor of receiving the underlying data feeds. The pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The

⁵⁶ See BATS One Approval Order, supra note 13.

Distributor Fees that the Exchange intends to propose for the BATS One Feed would not be less than the combined fee of subscribing to each individual data feed.⁵⁷ In addition, the Exchange believes that not charging External Distributors a Distribution Fee during their first three (3) months would not impede a vendor from creating a competing product. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period and offer a competing product on a similar basis as the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because it is identical to a similar fee charged by the NYSE for its BQT feed and a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing

⁵⁷ The combined external distribution fee for the individual depth of book data feeds of the BATS Exchanges is \$12,500 per month. The monthly External Distributor fee is \$2,500 per month for the EDGX Depth, \$2,500 per month for the EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth. The combined external distribution fee for the individual top and last sale data feed of the BATS Exchanges is \$5,000 per month. The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09 and SR-BYX-2015-09. See also the BZX Fee Schedule available at http://www.batstrading.com/support/fee_schedule/bzx/

the cost of a competing product. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes the proposed pricing, including the New External Distributor Fee Credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing.

Finally, the Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.⁵⁸ Nasdaq already offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.⁵⁹ The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered

⁵⁸ See supra note 55.

⁵⁹ Id.

irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

(C) 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.

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 Act⁶⁰ and paragraph (f) of Rule 19b-4 thereunder.⁶¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

⁶⁰ 15 U.S.C. 78s(b)(3)(A).

⁶¹ 17 CFR 240.19b-4(f).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-EDGX-2015-09 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 No. SR-EDGX-2015-09. 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 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 am and 3:00 pm. Copies of such filing will also 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 No. SR-EDGX-2015-09 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶²

Kevin M. O'Neill
Deputy Secretary

⁶² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in [brackets].

EDGX Exchange, Inc. Fee Schedule – Effective February 2, 2015

* * * * *

Market Data Fees:Definitions

- A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.
- An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.
- An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.
- A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.
- A Non-Professional User of an Exchange Market Data product is a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.
- A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

[EdgeBook DepthSM Fees]EDGX Depth:

Delivery	Fee
Internal Distributor	\$500/month

External Distributor	\$2,500/month
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[EdgeBook AttributedSM Fees]EDGX Depth Attributed:

In addition to [EdgeBook Depth X]EDGX Depth fees, as described above, all subscribers to [EdgeBook Attributed]EDGX Depth Attributed will also incur the following fees:

Delivery	Fee
Internal Distributor	\$2,500/month
External Distributor	\$5,000/month

[A “Distributor” of Exchange data is any entity that receives a market data feed 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 EDGX Exchange, Inc.]

EDGX Top:

<u>Delivery</u>	<u>Fee</u>
<u>Internal Distributor</u>	<u>\$500/month</u>
<u>External Distributor</u>	<u>\$1,250/month</u>

* Subscribers to the EDGX Top may also receive, upon request and at no additional charge, access to the EDGX Last Sale (as described in Rule 13.8(d)).

* New External Distributor Credit. New External Distributors of EDGX Top will not be charged an External Distributor Fee for their first three (3) months.

EDGX Last Sale:

<u>Delivery</u>	<u>Fee</u>
<u>Internal Distributor</u>	<u>\$500/month</u>
<u>External Distributor</u>	<u>\$1,250/month</u>

* Subscribers to the EDGX Last Sale may also receive, upon request and at no additional charge, access to the EDGX Top (as described in Rule 13.8(c)).

* New External Distributor Credit. New External Distributors of EDGX Last Sale will not be charged an External Distributor Fee for their first three (3) months.

EDGX Historical Depth Data:

<u>Delivery (Internal Use Only)</u>	<u>Fee</u>
<u>Per Month of Access Data</u>	<u>\$500</u>
<u>Per 1 TB Drive of Data</u>	<u>\$2,500</u>

BATS One Feedsm

Internal Distributor

	<u>BATS One Summary</u>	<u>BATS One Premium</u>
<u>Distribution Fee</u>	<u>\$10,000/month</u>	<u>\$15,000/month</u>
<u>Professional User Fee</u>	<u>\$0/month</u>	<u>\$0/month</u>
<u>Non-Professional User Fee</u>	<u>\$0/month</u>	<u>\$0/month</u>

External Distributor****

	<u>BATS One Summary</u>	<u>BATS One Premium</u>
<u>Distribution Fee</u>	<u>\$5,000/month*</u>	<u>\$12,500/month</u>
<u>Professional User Fee**</u>	<u>\$10/month</u>	<u>\$15/month</u>
<u>Non-Professional User Fee**</u>	<u>\$0.25/month</u>	<u>\$0.50/month</u>

<u>Enterprise Fee***</u>	<u>\$50,000/month</u>	<u>\$100,000/month</u>

* New External Distributor Credit. New External Distributors of the BATS One Summary Feed will not be charged an External Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS Summary One Feed.

** Each External Distributor will be eligible to receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly User Fees up to a maximum of the External Distributor Fee for the BATS One Feed.

*** As an alternative to User fees, a recipient firm may purchase a monthly Enterprise Fee to receive the BATS One Feed from an External Distributor for an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of the BATS One Feed if it wishes such User to be covered by the Enterprise Fee. The Enterprise Fee is in addition to the Distributor Fee.

**** Data Consolidation Fee. \$1,000/month

Edge Attribution Incentive Program: (No change).

[EDGX Historical Depth Data:

Delivery (Internal Use Only)	Fee
Per Month of Access Data	\$500
Per 1 TB Drive of Data	\$2,500]

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