

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

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

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

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

Number SR-EDGX-2011-02 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-EDGX-2011-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>10</sup> all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2011-02 and should be submitted on or before March 3, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-2924 Filed 2-9-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63820; File No. SR-EDGA-2011-02]

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

February 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>.

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

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

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

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

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

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

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

1. Purpose

In SR-EDGA-2011-01,<sup>4</sup> the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to add its routing strategies, which were contained in its fee schedule, to the rule and to introduce additional routing strategies to the rule. Two of those strategies that the Exchange added to Rules 11.9(b)(3)(q) and (r) were the SWPA/SWPB routing strategies. Under the SWPA strategy, an order would check the System for available shares and then would be sent to Protected Quotations and only for displayed size. Under this strategy, orders would not have to contain sufficient size to execute against *all* Protected Quotations (emphasis added). If any shares remain unexecuted, such remainder will be cancelled back to the User. Under the SWPB routing strategy, an order would check the System for available shares and then is sent to Protected Quotations and only for displayed size. Under this strategy, orders would have to contain sufficient size to execute against all Protected Quotations. The entire SWPB order will be cancelled back to the User immediately if at the time of entry there is insufficient quantity in the SWPB order to fulfill the displayed size of all Protected Quotations.

In this filing, the Exchange proposes to add the corresponding flag for the use of the SWPA/SWPB strategies, SW, to its fee schedule and assign it a fee of \$0.0031 per share for removal of liquidity from all market centers except from the New York Stock Exchange (NYSE). For any SWPA/SWPB orders that remove liquidity from the NYSE, the Exchange will continue to assign Flag D and charge a fee of \$0.0023 per share. This is clarified in proposed footnote 8 to the fee schedule. The lower fee charged for removing liquidity from the NYSE is consistent with the processing of similar routing strategies by EDGA's competitors. Secondly, of the major market centers, the NYSE fees for removing liquidity itself are lower, and EDGA is thus able to pass back such lower rates to its Members.

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on January 25, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

the objectives of Section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</sup> 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 fee of \$0.0031 per share is an equitable allocation of reasonable dues, fees, and other charges in that this order type is limited in its interaction with other Member orders as it only executes to the extent a Member order is at the Protected Quotation. As a result, compared to other routing strategies that always sweep the EDGA book before routing out, such as ROBA (fee of \$0.0025 per share), the SWPA/SWPB fees are higher. Secondly, the fee is equitable when compared to other similar type strategies of EDGA's competitors. As noted in SR-EDGA-2011-01, the SWPA/SWPB routing strategies are based on Nasdaq's MOPP strategy and BATS Parallel T routing strategy.<sup>7</sup> Nasdaq charges \$0.0035 per share for MOPP orders and BATS charges \$0.0033 per share for such orders. EDGA's rate is even more competitive than these. The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2011-02 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-EDGA-2011-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>10</sup> 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

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

<sup>4</sup> See SR-EDGA-2010-01 (January 21, 2011).

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

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

<sup>7</sup> See, e.g., NASDAQ Rule 4758 and BATS Rule 11.13.

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGA-2011-02 and should be submitted on or before March 3, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63844; File No. SR-CBOE-2011-010]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Bylaw and Related Rule Changes

February 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 27, 2011, Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, and II below, which Items have been prepared by CBOE. 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

CBOE proposes to (i) Amend its Bylaws and rules to eliminate its office of Vice Chairman of the Board, (ii) amend its Bylaws to eliminate its Trading Advisory Committee and

provide that the Board of Directors may establish an Advisory Board, (iii) amend its Bylaws to eliminate its Audit Committee, and (iv) amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of its affiliate C2 Options Exchange, Incorporated ("C2").

The text of the proposed amendments to CBOE's Bylaws and the proposed amendments to CBOE's rules is available on CBOE's Web site (<http://www.cboe.org/Legal>), at CBOE's Office of the Secretary, on the Commission's Web site at <http://www.sec.gov>, 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, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of this proposed rule change is to eliminate the office of CBOE Vice Chairman of the Board, to eliminate the CBOE Trading Advisory Committee and allow for a CBOE Advisory Board, to eliminate the CBOE Audit Committee, and to conform the composition requirements for the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements.

###### (a) Elimination of Office of Vice Chairman of the Board

In light of CBOE's demutualization and conversion from a membership organization to a stock corporation owned by a public holding company in June 2010, and based on the Exchange's experience since that time in operating in that form, the Exchange believes that it is no longer necessary to provide for an office of Vice Chairman of the Board (which is an office held by one of the Exchange's Industry Directors). Historically, the Vice Chairman's

primary functions were to take a lead role in facilitating communication between the Exchange and its membership, including lessor members that owned memberships and leased them to trading members, and in coordinating the activities of member committees. The role of the Vice Chairman has been significantly reduced since the Exchange has changed its structure. For example, the Exchange no longer has lessor members (as they became stockholders of CBOE's holding company, CBOE Holdings, Inc. ("CBOE Holdings")), in CBOE's restructuring), the Exchange's trading members are now Trading Permit Holders, and there are far fewer Trading Permit Holder committees than in the past. Additionally, the Exchange believes that it will continue to be able to obtain input from Trading Permit Holders through, among other things, direct communication with individual Trading Permit Holders and the ability to establish Trading Permit Holder committees (even if fewer than in the past) and an Advisory Board (as proposed by this rule filing).

The Exchange Bylaws will also continue to require that at least 30% of the directors on the CBOE Board of Directors must be Industry Directors and that at least 20% of CBOE's directors must be Representative Directors. Representative Directors are Industry Directors nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the CBOE Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. CBOE Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the CBOE Board of Directors to serve as Representative Directors. Thus, the Exchange will continue to provide for the fair representation of CBOE Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act.<sup>3</sup>

The specific proposed CBOE Bylaw and rule changes related to the elimination of the office of Vice Chairman of Board include the following changes:

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78f(b)(3).