

one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. Eastern Time ("ET"). On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the ETF that will form the basis for the ETF's calculation of the net asset value ("NAV") at the end of the business day.<sup>13</sup> The Web site and information will be publicly available at no charge. Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market information as the NAV is available to all market participants.<sup>14</sup> In addition, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which an interruption to the dissemination to the PIV occurs; if the interruption to the dissemination of the PIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>15</sup> Moreover, the Exchange

represents that the Manager and the Sub-Adviser each is affiliated with a broker-dealer and has implemented a "fire wall" with respect to the affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. Any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.<sup>16</sup>

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Fund will meet the initial and continued listing requirements under NYSE Arca Equities Rule 8.600(d).

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that

comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>16</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Shares must be in compliance with Rule 10A-3<sup>17</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3.

(6) The ETF will not invest in non-U.S. equity securities.

(7) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange. This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>18</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NYSEArca-2010-117), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-3182 Filed 2-11-11; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63858; File No. SR-EDGA-2011-04]

#### 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 7, 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 February 4, 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

<sup>17</sup> See 17 CFR 240.10A-3.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>13</sup> On a daily basis, the ETF will disclose on the ETF's Web site for each portfolio security or other financial instrument of the ETF the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

<sup>14</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D).

<sup>15</sup> See *id.* Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in securities

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.

#### **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. One of the routing strategies that was added was the IOCM strategy in Rule 11.9(b)(3)(s). The Exchange defined this as a routing strategy under which an order checks the System for available shares and then is sent to EDGX Exchange, Inc. ("EDGX") as an immediate or cancel (IOC) Mid-Point Match ("MPM") order.<sup>5</sup> If there is no liquidity at EDGX to execute at the

midpoint, the order is subsequently cancelled.

The Exchange proposes to add the "MT" flag to its fee schedule to be yielded when an order is routed to EDGX MPM using the IOCM routing strategy. The Exchange also proposes to assess a fee of \$0.0010 per share to reflect a pass through of the EDGX MPM fee.

EDGA Exchange proposes to implement this amendment to the Exchange fee schedule on February 4, 2011.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</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 \$0.0010 per share for the MT flag represents a pass through of the EDGX fee for removing liquidity from MPM, as indicated in the EDGX fee schedule for flag MT.

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

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

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

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the 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-2011-04 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-2011-04. 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

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

<sup>5</sup> EDGX Rule 11.5(c)(7) defines a Mid-Point Match (MPM) order as an order with an instruction to execute it at the midpoint of the NBBO. A MPM order may be a Day Order, Fill-or-Kill Order, or IOC Order. The Exchange noted that members can send in a MPM order directly to EDGX without routing through the EDGA platform as an IOCM routing option.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<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.

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGA-2011-04 and should be submitted on or before March 7, 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. 2011-3183 Filed 2-11-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 63859; File No. SR-BX-2011-007]

### Self-Regulatory Organizations; NASDAQ OMX BX LLC; Notice of Filing of Proposed Rule Change Relating to Permanent Approval of the BX and NES Inbound Routing Relationship

February 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 28, 2011, NASDAQ OMX BX LLC ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes request permanent approval of the Exchange's pilot program to permit the Exchange to accept inbound orders that Nasdaq

Execution Services, LLC ("NES") routes in its capacity as a facility of NASDAQ (with the attendant obligations and conditions).

#### 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to request permanent approval of the Exchange's pilot program to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of NASDAQ (with the attendant obligations and conditions). Currently, NES is the approved outbound routing facility of the NASDAQ Stock Market LLC ("NASDAQ") for cash equities, providing outbound routing from NASDAQ to other market centers.<sup>5</sup> BX

<sup>5</sup> See Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR-NASD-2005-128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System). See also SR-NASDAQ-2011-004 (January 14, 2011); Securities Exchange Act Release Nos. 63083 (October 13, 2010), 75 FR 64370 (October 19, 2010) (SR-NASDAQ-2010-127); 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100); 61682 (March 10, 2010), 75 FR 12592 (March 16, 2010) (SR-NASDAQ-2010-030); 61460 (February 1, 2010), 75 FR 6077 (February 5, 2010) (SR-NASDAQ-2010-018); 60039 (June 3, 2009), 74 FR 27365 (June 9, 2009) (SR-NASDAQ-2009-050); 59875 (May 6, 2009), 74 FR 22794 (May 14, 2009) (SR-NASDAQ-2009-043); 59807 (April 21, 2009), 74 FR 19251 (April 28, 2009) (SR-NASDAQ-2009-036); 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR-NASDAQ-2008-098); 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR-NASDAQ-2008-079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR-NASDAQ-2008-061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-NASDAQ-2008-054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR-NASDAQ-2007-078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR-NASDAQ-2007-065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR-NASDAQ-2007-005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR-NASDAQ 2006-043); 54271 (August 3, 2006),

also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ on a pilot basis.<sup>6</sup> On January 19, 2011, the Exchange filed a proposal to extend the current pilot program until June 15, 2011, with further understanding that the Exchange would file a separate proposal with the Commission seeking permanent approval of the BX and NES routing relationship.<sup>7</sup> The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of NASDAQ (with the attendant obligations and conditions).

In the initial Order, the Commission granted the BX and NES inbound routing relationship on a pilot basis. During this pilot period, BX committed to the following conditions:

1. The Exchange and FINRA will enter into a regulatory services agreement ("Regulatory Contract"), as well as an agreement pursuant to Rule 17d-2 under the Act ("17d-2 Agreement").<sup>8</sup> Pursuant to the Regulatory Contract and the 17d-2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.<sup>9</sup> Pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NES;

2. FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information;<sup>10</sup>

71 FR 45876 (August 10, 2006) (SR-NASDAQ-2006-027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

<sup>6</sup> See Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BX-2008-048); 61271 (December 31, 2009), 75 FR 1102 (January 8, 2010) (SR-BX-2009-085); 61782 (March 25, 2010), 75 FR 16534 (April 1, 2010) (SR-BX-2010-021); 62528 (July 19, 2010), 75 FR 43210 (July 23, 2010) (SR-BX-2010-048). See also Securities Exchange Act Release No. 63769 (January 26, 2011) (SR-BX-2011-003).

<sup>7</sup> See Securities Exchange Act Release No. 63769 (January 26, 2011) (SR-BX-2011-003).

<sup>8</sup> 17 CFR 240.17d-2.

<sup>9</sup> The Exchange also states that NES is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. See Securities Exchange Act Release No. 58927 (November 10, 2008), 73 FR 69685, 69689 (November 19, 2008) ("Notice").

<sup>10</sup> Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of Nasdaq routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted

Continued

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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