

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76708; File No. SR-EDGX-2015-63]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for EDGX Options

December 21, 2015.

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 December 10, 2015, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://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 modify the “Options Pricing” section of its fee schedule effective immediately, to modify pricing for orders routed away from the Exchange and executed at various away options exchanges. The Exchange currently charges the following rates for orders routed to certain other options exchanges: (i) Non-Customer<sup>6</sup> orders in non-Penny Pilot Securities,<sup>7</sup> routed to NYSE Arca, Inc. (“Arca”), which yield fee code AG, are charged \$0.95 per contract; (ii) Intermarket Sweep Orders (“ISOs”) in non-Penny Pilot Securities that are directed to Nasdaq Options Market LLC (“NOM”), Arca, or ISE Gemini, LLC (“ISE Gemini”) are charged \$0.95 per contract; (iii) ISOs directed to other options exchanges are charged \$0.65 per contract;<sup>8</sup> (iv) Customer orders routed to the International Securities Exchange, LLC (“ISE”) in non-Penny Pilot Securities which yield fee code ID and are charged \$0.12 per contract; (v) Customer orders routed to the Miami International Securities Exchange LLC (“MIAX”) which yield fee code MC are charged \$0.12 per contract; (vi) Non-Customer orders routed to MIAX which yield fee code MF are charged \$0.65 per contract; (vii) Customer orders routed to the BOX Options Exchange LLC

(“BOX”) which yield fee code OC are charged no fee; (viii) Non-Customer orders routed to BOX which yield fee code OF are charged \$0.99 per contract; (ix) Non-Customer orders routed to NOM in Penny Pilot Securities which yield fee code QF are charged \$0.65 per contract; (x) Non-Customer orders routed to NOM in non-Penny Pilot Securities which yield fee code QG are charged \$0.95 per contract; and (xi) Customer orders routed to NYSE MKT LLC (“NYSE MKT” f/k/a AMEX) which yield fee code XC are charged \$0.12 per contract.

In an effort to continue to offer routing services to its Members at prices that approximate the cost to the Exchange, the Exchange is proposing to amend those rates as follows: (i) the fee for Customer orders routed to ISE in non-Penny Pilot Securities and any Customer orders routed to MIAX, BOX or NYSE MKT (fee codes ID, MC, OC and XC, respectively) would be increased to \$0.15 per contract; (ii) the fee for Non-Customer Orders in non-Penny Pilot Securities routed to Arca would be increased to \$1.15 per contract (fee code AG); (iii) the fee for ISOs directed to NOM, Arca, or ISE Gemini would be increased to \$1.25 per contract for Non-Penny Pilot Securities (fee code D1); (iv) the fee for ISOs directed to other options exchanges would be increased to \$0.75 per contract (fee code D4);<sup>9</sup> (v) the fee for Non-Customer orders routed to MIAX would be increased to \$0.85 per contract (fee code MF); (vi) the fee for Non-Customer orders routed to BOX would be increased to \$1.20 (fee code OF); (vii) the fee for Non-Customer orders routed to NOM in Penny Pilot Securities would be increased to \$0.70 (fee code QF); and (viii) the fee for Non-Customer orders routed to NOM in non-Penny Pilot Securities would be increased to \$1.25 (fee code QG).

As noted previously and as set forth above, the Exchange’s current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.*, clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing

<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)(3)(A)(ii).

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

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

<sup>6</sup> “Non-Customer” applies to any transaction that is not a Customer Order. “Customer” applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a “Professional” as defined in Exchange Rule 16.1.

<sup>7</sup> “Penny Pilot Securities” are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

<sup>8</sup> ISOs directed to Nasdaq OMX BX LLC (“Nasdaq BX”) in non-Penny Pilot Securities which yield fee code D2 and ISOs directed to the C2 Options Exchange, Inc. (“C2”) and Nasdaq OMX PHLX LLC (“Nasdaq PHLX”) which yield fee code D3 are charged \$0.95 per contract.

<sup>9</sup> The Exchange does not propose to amend the fees charged for ISOs directed to Nasdaq BX in non-Penny Pilot Securities which yield fee code D2 and ISOs directed to the C2 and Nasdaq PHLX which yield fee code D3.

fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. In performing this analysis, the Exchange has concluded that certain orders that it was routing to other options exchanges were costing more than it was charging, and in one case, were costing significantly less than it was charging. As a result, and in order to avoid subsidizing routing to away options exchanges and to continue providing quality routing services, the Exchange proposes relatively modest increases and adjustments to the charges assessed for the orders described above.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule immediately.<sup>10</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>11</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. Absent the proposed changes, the Exchange has concluded that certain orders that it was routing to

other options exchanges would cost more than its current fees. Accordingly, the Exchange believes that the proposed increases are fair, equitable and reasonable because they will help the Exchange to avoid subsidizing routing to away options exchanges and to continue providing quality routing services. The Exchange believes that its fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at away options exchanges. Under its straightforward fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at away options exchanges. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange notes that routing through the Exchange is voluntary. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to away options exchanges.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As it relates to the proposed changes to routing fees, the proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place and that reflects pricing changes by various options exchanges as well as increases to other Routing Costs incurred by the Exchange. The Exchange also notes that Members may choose to mark their

orders as ineligible for routing to avoid incurring routing fees.<sup>13</sup>

#### (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 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)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</sup> 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

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2015-63 on the subject line.

##### Paper Comments

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

All submissions should refer to File Number SR-EDGX-2015-63. This file number should be included on the subject line if email 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

<sup>10</sup> The Exchange initially filed the proposed fee change on December 1, 2015 (SR-EDGX-2015-57). On December 10, 2015, the Exchange withdrew that filing and submitted filing SR-BATS-2015-63 [sic].

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See Exchange Rule 21.1(d)(8) (describing "Post Only Orders") and Exchange Rule 21.9(a)(1) (describing the routing process, which requires orders to be designated as available for routing).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

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 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 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 Number SR-EDGX-2015-63 and should be submitted on or before January 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31945; 812-14461]

### Recon Capital Series Trust, et al.; Notice of Application

December 21, 2015.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

#### **SUMMARY:** *Summary of Application:*

Applicants request an order that would permit (a) Series of certain open-end management investment companies to issue shares ("Shares") redeemable in

large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure. The order would supersede a prior order.<sup>1</sup>

**Applicants:** Recon Capital Series Trust (the "Trust"), Recon Capital Advisors, LLC (the "Current Adviser"), Recon Capital Partners, LLC, and Foreside Fund Services, LLC (the "Current Distributor").

**DATES: Filing Dates:** The application was filed on May 15, 2015, and amended on October 13, 2015.

**Hearing or Notification of Hearing:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: the Trust, the Current Adviser, and Recon Capital Advisors, LLC, 145 Mason Street, 2nd Floor, Greenwich, CT 08830; and the Current Distributor, Three Canal Plaza, Suite 100, Portland, ME 04101.

<sup>1</sup> Certain of the applicants previously received an order of exemption from the Commission with respect to the offering of indexed based funds. See Sage Quant Management LLC, et al., Investment Company Act Release Nos. 30439 (Mar. 28, 2013) (notice) and 30476 (Apr. 23, 2013) (order) (the "Existing Funds Order").

#### **FOR FURTHER INFORMATION CONTACT:**

Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or David P. Bartels, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### **Applicants' Representations**

1. The Trust is a Delaware statutory trust that has registered under the Act as an open-end management investment company with multiple series. The Trust currently offers a number of exchange traded funds, each of which has a distinct investment objective, tracks a particular index and utilizes either a replication or representative sampling strategy (the "Current Funds"). Each Fund (as defined below) will operate as an exchange traded fund ("ETF").

2. The Current Adviser is the investment adviser to the Current Funds and an Adviser (as defined below) will be the investment adviser to the Funds. The Current Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Current Adviser is a wholly owned subsidiary of Recon Capital Partners, LLC, which is also registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers (each, a "Sub-Adviser") to particular Funds, or their respective Master Fund (as defined below). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Current Distributor serves as the principal underwriter and distributor for the Current Funds. Applicants request that the order also apply to any future distributor of Shares ("Future Distributor" and, together with the Current Distributor, the "Distributor"), provided that any such Future Distributor complies with the terms and conditions of the application. The Distributor may be an affiliated person or an affiliated person of an affiliated person of that Fund's Adviser and/or Sub-Advisers.

4. Applicants request that the order apply to the Current Funds and any additional series of the Trust and any

<sup>16</sup> 17 CFR 200.30-3(a)(12).