SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77211; File No. SR–EDGX–2016–10]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees as Applicable to the Equity Options Platform

February 23, 2016.

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 February 10, 2016, 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[3] 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 the fee schedule applicable to Members[5] 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,* 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

On November 1, 2015, the Exchange adopted an initial fee schedule establishing fees applicable to Members trading options on and using services provided by to its equity options platform (''EDGX Options'').[6] As a new options exchange, the Exchange aimed to attract order flow by offering market participants a competitive and simplified pricing structure. Therefore, the Exchange did not initially propose to implement a tiered pricing structure under which it would provide enhanced rebates or reduced fees based on the Member's monthly trading activity. Nor did the Exchange propose to implement ''maker-taker'' pricing (*i.e.,* providing a rebate to the side of the transaction that added liquidity and a fee to the side of the transaction that removed liquidity).[7]

The Exchange has experienced an increase in order flow since it commenced trading in November 2015[8] and now seeks to amend its fee schedule in order to incentivize Members to send additional order flow to the Exchange.[9] Therefore, the Exchange proposes to amend its fee schedule to amend the Standard Rates and Fee Codes and Associated Fees Table to delete or update existing fee codes as well as to add two new fee codes. The Exchange also proposes to adopt pricing tiers under proposed footnotes 1 and 2, Customer Volume Tiers and Market Maker Volume Tiers, respectively. Under the proposed tiers, Customers[10] or Market Makers[11] that achieve certain volume criteria may qualify for reduced fees or enhanced rebates. As a result of the proposed tiers, the Exchange proposes to add definitions of ADV, ADAV, and TCV, as described below, to the Definitions section of its fee schedule. Lastly, the Exchange proposes to amend its Marketing Fee to increase the fee for Non-Penny Pilot Securities[12] from $0.65 per contract to $0.70 per contract.

Standard Transaction Fees

The Exchange currently maintains a fee structure under which standard rates are applied, the amount of which depend on whether the order is for a Customer, Non-Customer,[13] or Market Maker as well as the capacity of the order with which such order trades.[14] The Exchange now proposes to amend the Standard Rates table, which summarizes the main fees and rebates applicable to trading on the Exchange, including tiered pricing, as well as the Fee Codes and Associated Fees table, which provides detailed rates for all types of executions occurring on the Exchange and of orders that have been routed to other options exchanges, to delete or update existing fee codes as well as to add two new fee codes. The result of these amendments would result in a fee structure under which the standard rate that applies would depend solely on whether the order is for a Customer, Non-Customer, or Market Maker, and not the capacity of the contra-side order.

Customer. Currently, neither side of a transaction is charged a fee where both sides trade in a Customer capacity. Such Customer orders yield either fee code PA or NA where they add liquidity and PR or NR where they remove liquidity, depending on whether the order is in a

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).

5 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).

6 *See* Securities Exchange Act Release No. 76453 (November 17, 2015), 80 FR 72999 (November 23, 2015) (SR–EDGX–2015–56). On December 1, 2015, the Exchange amended the EDGX Options fee schedule to modify pricing for orders routed away and executed at various away options exchanges. *See* Securities Exchange Act Release No. 76708 (December 21, 2015), 80 FR 80832 (December 28, 2015) (SR–EDGX–2015–63).

7 The Exchange does not propose to implement maker-taker pricing in this proposed rule change.

8 *See* Market Volume Summary, *available at http://www.batsoptions.com/market_summary/.*

9 The Exchange initially filed the proposed fee change on February 1, 2016, in SR–EDGX–2016–05. On February 3, 2016, the Exchange withdrew SR–EDGX–2016–05 and submitted SR–EDGX–2016–07. On February 9, 2016, the Exchange withdrew SR–EDGX–2016–07 and submitted this filing.

10 The term ''Customer'' applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1.

11 The term ''Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

12 The term ''Non-Penny Pilot Security'' applies to those issues that are not Penny Pilot Securities quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

13 The term ''Non-Customer'' applies to any transaction that is not a Customer order.

14 The standard rates and applicable fee codes apply unless a Member's transaction is assigned a fee code other than a standard fee code. A fee code other than a standard fee code is only applied to a Member's transaction that is routed to and executed on another options exchange or where it is to participate in the EDGX Options opening process under Exchange Rule 21.7.

Penny Pilot Security [15] or not. An order that trades in a Customer capacity receives a rebate of $0.21 per contract where it executes against a contra-side order that trades in a Non-Customer capacity. Such Customer orders yield either fee code PY or NY where they add liquidity and PC or NC where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

The Exchange proposes to amend the pricing for Customer orders by eliminating fee codes PA, NA, PR, NR, PY, and NY. Fee codes PA and NA are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that add liquidity against a contra-side Customer order and are charged no fee. Likewise, fee codes PR and NR are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against a contra-side Customer order and are charged no fee. Fee codes PY and NY are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that add liquidity against a contra-side Non-Customer order and receive a rebate of $0.21 per contract. The Exchange also proposes to update fee codes PC and NC, which are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against a contra-side Non-Customer order and receive a rebate of $0.21 per contract.

As a result of the above amendments, fee code PC would be appended to all Customer orders in Penny Pilot Securities. Likewise, fee code NC would be appended to all Customer orders in Non-Penny Pilot Securities. Customer orders that yield fee codes PC or NC would receive a rebate of $0.01 per contract, rather than $0.21 per contract, regardless of the counter party and whether the Customer order adds or removes liquidity.

Market Maker. Currently, an order that trades in a Market Maker capacity is charged a fee of $0.21 per contract where it executes against a contra-side order that trades in a Customer capacity. Such Market Maker orders yield either fee code PM or NM where they add liquidity and PP or NP where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

The Exchange proposes to amend the pricing for Customer orders by updating fee codes PM, NM, PP, and NP. Fee code PM and NM are currently appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that add liquidity against contra-side Customer orders and are charged a fee of $0.21 per contract. As amended, fee code PM would be appended to Market Maker orders in Penny Pilot Securities. Likewise, fee code NM would be appended to Market Maker orders in Non-Penny Pilot Securities. Market Maker orders that yield fee codes PM or NM would be charged a fee of $0.19 per contract, rather than $0.21 per contract, regardless of the counter party and whether the Customer order adds or removes liquidity.

Fee codes PP and NP are currently appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against contra-side Customer orders and are charged a fee of $0.21 per contract. As discussed in more detail below, the Exchange proposes to amend fee codes PP and NP and to re-purpose such fee codes to apply instead to certain Professional orders. Therefore, Market Maker orders that remove liquidity would yield fee codes PM or NM and be charged a fee of $0.19 per contract, rather than $0.21 per contract, regardless of the counter party and whether the Customer order adds or removes liquidity.

Non-Customer. Currently, for Penny Pilot Securities, an order that trades in a Non-Customer capacity, other than a Market Maker order, is charged a fee of $0.46 per contract where it executes against a contra-side order that trades in a Customer capacity. Such Non-Customer orders in Penny Pilot Securities yield fee code PO where they add liquidity and PQ where they remove liquidity. Currently, Non-Customer orders in Non-Penny Pilot Securities are charged a fee of $0.86 per contract and yield fee code NO where they add liquidity and NQ where they remove liquidity. Neither side of a transaction is currently charged a fee where both sides trade in a Non-Customer capacity. Such Non-Customer orders yield either fee code PF or NF where they add liquidity and PN or NN where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

Orders that trade in a Non-Customer Capacity include Broker Dealer,[16] Firm,[17] Joint Back Office,[18] Professional,[19] and Away Marker Maker.[20] The Exchange proposes to amend fee codes PP, NP, PO, PQ, NO, NQ, PF, NF, PN, and NN to apply to the specific capacities that a Non-Customer order may represent. Each of the proposed amendments are as follows:

- *Fee Codes PP and NP.* As stated above, fee codes PP and NP are currently appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against contra-side Customer orders and are charged a fee of $0.21 per contract. The Exchange proposes to amend fee codes PP and NP to instead apply to Professional orders. As amended, fee code PP would appended Professional orders in Penny Pilot Securities regardless of the counter party and whether the Customer order adds or removes liquidity. Orders that yield fee code PP would be charged a fee of $0.48 per contract. Fee code NP would be amended to apply to Professional orders in Non-Penny Pilot Securities regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code NP would be charged a fee of $0.75 per contract.
- *Fee Codes PO and PQ.* An order in a Penny Pilot Security that trades in a Non-Customer capacity, other than a Market Maker, is charged a fee of $0.46 per contract where it executes against a contra-side order that trades in a Customer capacity. Such orders yield fee code PO where they add liquidity and PQ where they remove liquidity. The Exchange proposes to amend fee code PO to instead apply to Joint Back Office orders. Fee code PO would be amended to apply to Joint Back Office orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Also, orders that yield fee code PO would be charged a fee of $0.48

[15] The term ‘‘Penny Pilot Security’’ applies to those issues that are quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[16] The term ‘‘Broker Dealer’’ applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the OCC.

[17] The term ‘‘Firm’’ applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction.

[18] The term ‘‘Joint Back Office’’ applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer.

[19] The term ‘‘Professional’’ applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

[20] The term ‘‘Away Market Maker’’ applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange.

per contract, rather than $0.46. As a result of the proposed amendments to fee code PO and the general proposal in this filing to apply fees regardless of whether orders add or remove liquidity, fee code PQ is no longer necessary and the Exchange proposes to remove it from its fee schedule.

- *Fee Code NO and NQ.* Non-Customer orders in Non-Penny Pilot Securities are charged a fee of $0.86 per contract and yield fee code NO where they add liquidity and NQ where they remove liquidity against a contra-side Customer order. Similar to fee code PO, the Exchange proposes to amend fee code NO to instead apply to Joint Back Office orders. Fee code NO would be amended to apply to Joint Back Office orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Also, orders that yield fee code NO would be charged a fee of $0.75 per contract, rather than $0.86 per contract. As a result of the proposed amendments to fee code NO and the general proposal in this filing to apply fees regardless of whether orders add or remove liquidity, fee code NQ is no longer necessary and the Exchange proposes to remove it from its fee schedule.
- *Fee Codes PF, NF, PN, and NN.* Neither side of a transaction is currently charged a fee where both sides trade in a Non-Customer capacity. Such Non-Customer orders yield either fee code PF or NF where they add liquidity and PN or NN where they remove liquidity. Fee codes PF and PN are applied to Non-Customer orders in Penny Pilot Securities and NF and NN are applied to orders in Non-Penny Pilot Securities. The Exchange proposes to amend fee codes PF and NF to instead apply to Firm orders and fee codes PN and NN to instead apply to Away Market Maker orders. As amended, fee code PF would apply to Firm orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code PF would no longer be free and would be subject to a charge of $0.45 per contract. Fee code NF would be amended to apply to Firm orders in Non-Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code NF would no longer be free and would be subject to a charge of $0.75 per contract. Fee code PN would be amended to apply to Away Market Maker orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code PN would no longer be free and would be subject to a charge of $0.48 per contract. Fee code NN would be amended to apply to Away Market Maker orders in Non-Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code NN would no longer be free and would be subject to a charge of $0.75 per contract.

The Exchange also proposes to add two new fee codes to its Fee Codes and Associated Fees table to apply to Broker Dealer orders. Proposed fee code NB would apply to Broker Dealer orders in Non-Penny Pilot Securities and proposed fee code PB would apply to Broker Dealer orders in Penny Pilot Securities. Orders that yield fee code NB would be charged a fee of $0.75 per contract. Orders that yield fee code PB would be charged a fee of $0.48 per contract. Fee codes NB and BB would be appended to Broker Dealer orders regardless of the capacity of the counter party or whether they add or remove liquidity.

Proposed Tiers and Definitions

Initially, the Exchange did not propose to implement a tiered pricing structure under which it would provide enhanced rebates or reduced fees based on the Member's monthly trading activity. The Exchange now proposes to adopt two pricing tiers under proposed footnotes 1 and 2, Customer Volume Tiers and Market Maker Volume Tiers, respectively. Under the proposed tiers, Customers and Market Makers that achieve certain volume criteria may qualify for reduced fees or enhanced rebates.

Definitions. As a result of the proposed tiers, the Exchange proposes to add definitions of ADV, ADAV, and TCV to the Definitions section of its fee schedule. The proposed definitions are designed to provide transparency with regard to the criteria necessary to achieve the proposed Customer Volume Tier and Market Maker Volume Tier and are based on and nearly identical to those currently provided for in the fee schedule for the equity options platform operated by BATS Exchange, Inc. (''BZX Options'').[21] ''ADAV'' would be defined as the average daily added volume calculated as the number of contracts added and ''ADV'' would be defined as the average daily volume calculated as the number of contracts added or removed, combined, per day. The definitions of ADAV and ADV would further state that ADAV and ADV would be calculated on a monthly basis and would exclude contracts added or removed on any day that the Exchange's system experienced a disruption that lasted for more than 60 minutes during regular trading hours (''Exchange System Disruption'') and on any day with a scheduled early market close. The definitions would further state that routed contracts would also not be included in ADAV or ADV calculation. The definitions would also permit, with prior notice to the Exchange, a Member to aggregate their ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member. ''TCV'' would be defined as the total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

Customer Volume Tiers. As described above, fee code PC and NC would be appended to all Customer orders in Penny Pilot and Non-Penny Pilot Securities, respectively and would receive a rebate of $0.01 per contract. The proposed Customer Volume Tier in footnote 1 shall consist of four separate tiers, each providing an enhanced rebate to Member's Customer orders that yield fee codes PC or NC upon satisfying monthly volume criteria required by the respective tier. The amount of the rebate is in relation to the volume required to achieve their tier. The rebates and required criteria available to Member's Customer orders that yield fee codes PC or NC are as follows:

- *Tier 1.* A rebate of $0.10 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.20% of average TCV.
- *Tier 2.* A rebate of $0.16 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.30% of average TCV.
- *Tier 3.* A rebate of $0.21 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.50% of average TCV.
- *Tier 4.* A rebate of $0.25 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.80% of average TCV.

Market Maker Volume Tiers. As described above, fee codes PM and NM would be appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities,

[21] *See* the BZX Options' fee schedule *available at http://www.batsoptions.com/support/fee_schedule/bzx/.*

respectively. Market Maker orders that yield fee codes PM or NM would be charged a fee of $0.19 per contract. The proposed Market Maker Volume Tier in footnote 2 shall consist of four separate tiers, each providing a reduced fee or rebate to Member's Market Maker orders that yield fee codes PM or NM upon satisfying monthly volume criteria required by the respective tier. The amount of the reduced fee or rebate is in relation to the volume required to achieve their tier. The rebates and required criteria available to Member's Market Maker orders that yield fee codes PM or NM are as follows:

- *Tier 1.* A reduced fee of $0.16 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 0.05%.
- *Tier 2.* A reduced fee of $0.07 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 0.30%.
- *Tier 3.* A reduced fee of $0.02 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 0.70%.
- *Tier 4.* A rebate of $0.01 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 1.10%.

Marketing Fees

The Exchange assesses a Marketing Fee to all Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Customer. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. Each Primary Market Maker (''PMM'') [22] and Directed Market Maker (''DMM'') [23] have a Marketing Fee pool into which the Exchange deposits the applicable per-contract Marketing Fee. For orders directed to DMMs, the applicable Marketing Fees are allocated to the DMM pool. For non-directed orders, the applicable Marketing Fees are allocated to the PMM pool. All Market Makers that participated in such transaction pay the applicable Marketing Fees to the Exchange, which will allocate such funds to the Market Maker that controls the distribution of the marketing fee pool. Each month the Market Maker provides instruction to the Exchange describing how the Exchange is to distribute the Marketing Fees in the pool to the order flow provider, who submit as agent, Customer orders to the Exchange.

The amount of the Marketing Fee depends upon whether the affected option class is a Penny Pilot Security. A Marketing Fee of $0.25 per contract is assessed to Market Makers for transactions in Penny Pilot Securities. A Marketing Fee of $0.65 per contract is currently assessed to Market Makers for transactions in Non-Penny Pilot Securities. The Exchange now proposes to increase the Marketing Fee assessed to Market Makers for transactions in Non-Penny Pilot Securities from $0.65 per contract to $0.70 per contract. For option classes that are Non-Penny Pilot Securities, the Exchange's proposed Marketing Fee is equal to other options exchanges, such as PHLX, which also charges $0.70 per contract.[24]

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.[25] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[26] 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.

Standard Transaction Fees

The Exchange believes its proposed standard rates are equitable and reasonable. The Exchange operates in a highly competitive market in which market participants may readily send order flow to any of twelve competing venues if they deem fees at the Exchange to be excessive. As a new options exchange, the proposed fee structure remains intended to attract order flow to the Exchange by offering market participants a competitive and simplified pricing structure. To that end, the Exchange believes it is reasonable to remove fee codes for orders that add and remove liquidity, as the rates are the same whether an order adds or removes liquidity under both the prior fee structure and the proposed fee structure. Accordingly, having one fee code dependent on the capacity of the order and whether the issue is a Penny Pilot Security or not will result in a simpler fee schedule.

The Exchange believes it is equitable, reasonable and non-discriminatory to charge fees to Non-Customers (including Market Makers other than those qualifying for Market Maker Volume Tier 4) and provide a rebate to Customers under the proposed fee structure. Non-Customer accounts generally engage in increased trading activity as compared to Customer accounts. This level of trading activity draws on a greater amount of Exchange system resources than that of Customers. Simply, the more orders submitted to the Exchange, the more messages sent to and received from the Exchange, and the more Exchange system resources utilized. This level of trading activity by Non-Customer accounts results in greater ongoing operational costs to the Exchange.[27] As such, the Exchange generally aims to recover its costs by fees to Non-Customers executed on the Exchange. Sending orders to and trading on the Exchange are entirely voluntary. Under these circumstances, Exchange transaction fees must be competitive to attract order flow, execute orders, and grow its market. Other options exchanges also provide for varying rates based on the capacity of the order.[28] As such, the Exchange believes its proposed trading fees are fair and reasonable.

The Exchange also believes it is equitable, reasonable and not unfairly discriminatory to charge Market Makers lower fees than other Non-Customers who participate on the Exchange. The proposed differentiation between Market Makers and other market participants, such as Broker Dealers and Firms, recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Market Makers, unlike other market participants, have obligations to the market and regulatory requirements,[29] which normally do not apply to other market participants. A Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are

[22] *See* Exchange Rule 21.8(g).

[23] *See* Exchange Rule 21.8(f).

[24] *See* Nasdaq OMX PHLX LLC (''PHLX'') fee schedule *available at http://nasdaqtrader.com/Micro.aspx?id=PHLXPricing.*

[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78f(b)(4).

[27] The Exchange, however, does not propose to assess ongoing fess for EDGX Options market data or fees related to order cancellation.

[28] *See* Nasdaq OMX PHLX LLC (''PHLX'') fee schedule *available at http://nasdaqtrader.com/Micro.aspx?id=PHLXPricing* (charging no fee to customer orders and variable rates non-customer orders). *See also* Nasdaq OMX BX, Inc. fee schedule *available at http://nasdaqtrader.com/Micro.aspx?id=BXOptionsPricing.*

[29] *See* Exchange Rule 22.5, Obligations of Market Makers.

inconsistent with such course of dealings. On the other hand, other Non-Customers do not have such obligations on the Exchange. For the same reasons, the Exchange believes it is reasonable to provide an additional incentive to Market Makers in the form of the proposed Market Maker Volume Tiers.

Moreover, the Exchange believes it is equitable, reasonable and not unfairly discriminatory to provide a rebate to Customer orders that execute on the Exchange. The securities markets generally, and the Exchange in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Customer benefit. Providing a rebate to Customers is designed to encourage Customers to add liquidity to the Exchange. In turn, increased liquidity is beneficial to all other market participants on the Exchange that seek executions against those Customer orders. As such, the Exchange believes the proposed Customer transaction pricing is equitably allocated, reasonable and not unfairly discriminatory. For the same reasons, the Exchange believes it is reasonable to provide an additional incentive to Customers in the form of the proposed Customer Volume Tiers.

Although the proposal will result in an increased fee for certain participants, including all Non-Customers other than Firms and Market Makers in Penny Pilot Securities, or will result in a lower rebate for others, namely all Customers other than those qualifying for Customer Volume Tier 3 or 4, the Exchange still believes that its proposed pricing structure is fair and equitable, reasonable, and not unfairly discriminatory. As noted above, while the Exchange is seeking to encourage additional participation particularly from those representing Customer orders and Market Maker orders, the Exchange believes that its pricing as a whole remains competitive with other options exchanges, offering rates that are generally equal to or better than incumbent exchanges. Additional revenue earned from the increases to pricing will be used to fund additional initiatives and incentives that are all intended to further grow EDGX Options, which, as noted above, is a new options exchange. As has also been noted above, the proposed changes in many ways simplify the pricing structure of EDGX Options. Further, the proposed pricing also eliminates uncertainty that came with variable rates that were based on counter-party. Instead, the proposed fees and rebates provide certainty to market participants regarding the cost of trading in certain capacities and in both Penny Pilot Securities and Non-Penny Pilot Securities. Also, the proposed fee structure does provide cost savings for some participants, including all Non-Customers in Non-Penny Pilot Securities (when executing against Customers given that executions against Non-Customers were free) and Market Makers. Based on the foregoing, the Exchange believes that the proposed fees and rebates to replace the Exchange's initial fee structure for executions on the Exchange is fair and equitable, reasonable, and not unfairly discriminatory.

Proposed Tiers and Definitions

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The proposed Customer Volume Tiers and Market Maker Volume Tiers are intended to incentivize Members to send additional orders to the Exchange in an effort to qualify for the enhanced rebate available by the respective tier.

The Exchange believes that the proposed tiers are reasonable, fair and equitable, and non-discriminatory, for the reasons set forth with respect to volume-based pricing generally and because such change will either incentivize participants to further contribute to market quality. The Exchange also believes that the proposed tiered pricing structure is consistent with pricing previously offered by the Exchange for its equity securities trading platform as well as options competitors of the Exchange and does not represent a significant departure from such pricing structures.

The Exchange believes that the proposed definitions of ADV, ADAV and TCV are reasonable, fair and equitable, and non-discriminatory as they are based on the rules of the Exchange's affiliated options exchange, BZX Options, and will provide transparency to Members regarding the calculations used to determine volume levels for purposes of the proposed tiered pricing model.

Marketing Fees

The Exchange notes that the U.S. options markets are highly competitive, and the marketing fee is intended to provide an incentive for Market Makers to enter into marketing agreements with Members so that they will provide order flow to the Exchange. The marketing fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. The Exchange believes that the proposed increase to marketing fees for Non-Penny Pilot Securities is equitably allocated and reasonable because it will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions. The Exchange also believes that its proposed increase to the marketing fee for Non-Penny Pilot Securities is reasonable since the amount of the Exchange's marketing fee is the same as other exchanges for Non-Penny Pilot Securities.[30] Further, as the marketing fee will be applied to all Market Makers, the Exchange believes that the proposed fee is not unfairly discriminatory.

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

The Exchange believes its proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, the proposal is a competitive proposal that is seeking to further the growth of the Exchange. The Exchange has structured its proposed fees and rebates to attract certain additional order flow from Market Makers and Customers, however, as noted above, the Exchange believes that its pricing for all capacities is competitive with that offered by other options exchanges. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange does not believe that the proposed tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange by incentivizing certain

[30] *See supra* note 24 and accompanying text.

participants to increase their participation on the Exchange.

The Exchange believes that its program of marketing fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges, will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

(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 [31] and paragraph (f) of Rule 19b–4 thereunder.[32] 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 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 email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2016–10 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–2016–10. 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 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 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–2016–10 and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04249 Filed 2–26–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form SD; SEC File No. 270–647, OMB Control No. 3235–0697.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form SD (17 CFR 249b–-400) under Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*)(''Exchange Act'') pursuant to Section 13(p)(15 U.S.C. 78m(p)) of the Exchange Act is filed by issuers to provide disclosures regarding the source and chain of custody of certain minerals used in their products. We estimate that Form SD takes approximately 480.61 hours per response to prepare and is filed by approximately 864 issuers. We estimate that 75% of the 480.61 hours per response (360.46 hours) is prepared by the issuer internally for a total annual burden of 311,437 hours (360.46 hours per response x 864 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04351 Filed 2–26–16; 8:45 am]

BILLING CODE 8011–01–P

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[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f).

[33] 17 CFR 200.30–3(a)(12).