delay and designates the proposal effective upon filing.[33]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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–NASDAQ–2015–061 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–061. 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–NASDAQ–2015–061 and should be submitted on or before August 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Brent J. Fields,

Secretary.

[FR Doc. 2015–17169 Filed 7–13–15; 8:45 am]

BILLING CODE 8011–01–P

[33] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75397; File No. SR–EDGX–2015–28]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Market Data Section of Its Fee Schedule

July 8, 2015.

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 July 1, 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[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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) Adopt User fees, an Enterprise fee, and a Digital Media Enterprise fee for the EDGX Top and EDGX Last Sale feeds; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise Fee as well as correct a cross-reference within the definition of ''Non-Professional User''.

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

The Exchange proposes to amend the Market Data section of its fee schedule to: (i) Adopt User fees, an Enterprise fee, and a Digital Media Enterprise fee for the EDGX Top and EDGX Last Sale feeds; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise Fee as well as correct a cross-reference within the definition of ''Non-Professional User''.

EDGX Top and Last Sale Fees

EDGX Top is a market data feed that includes top of book quotations and execution information for all equity securities traded on the Exchange.[5] EDGX Last Sale is a market data feed that includes last sale information for all equity securities traded on Exchange.[6]

[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] *See* Exchange Rule 13.8(c).

[6] *See* Exchange Rule 13.8(d).

Currently, the Exchange only charges fees for both internal and external distribution of the EDGX Last Sale and EDGX Top feeds. The cost of EDGX Last Sale for an Internal Distributor [7] is $500 per month. Likewise, the cost of EDGX Top for an Internal Distributor is also $500 per month. The Exchange currently does not charge per User [8] fees for either EDGX Last Sale or EDGX Top. Therefore, the Exchange does not currently require an External Distributor [9] of EDGX Last Sale or EDGX Top to count, classify (*e.g.,* professional or non-professional), or report to the Exchange information regarding the customers to which they provide the data. Instead, the Exchange charges an External Distributor of EDGX Last Sale a flat fee of $1,250 per month. The Exchange also separately charges an External Distributor of EDGX Top a flat fee of $1,250 per month. End Users currently do not pay the Exchange for EDGX Last Sale or EDGX Top, nor are End Users required to enter into contracts with the Exchange.

Subscribers to either EDGX Top or EDGX Last Sale are able to receive, upon request and at no additional cost, EDGX Last Sale or EDGX Top, as applicable. The Exchange also offers a New External Distributor Credit under which new External Distributors of EDGX Top or EDGX Last Sale will not be charged a Distributor Fee for their first three (3) months.

The Exchange now proposes to amend its fee schedule to incorporate additional fees related to the EDGX Top or EDGX Last Sale feeds.[10] These fees include the following, each of which are described in detail below: (i) Usage Fees for both Professional [11] and Non-Professional [12] Users; [13] (ii) Enterprise Fees; [14] and (iii) a Digital Media Enterprise Fee.

User Fees. The Exchange proposes to charge those who receive either EDGX Top or EDGX Last Sale from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $2.00 per User. Non-Professional Users will be assessed a monthly fee of $0.05 per User.[15] The Exchange does not propose to charge per User fees to Internal Distributors.

External Distributors would be required to count every Professional User and Non-Professional User to which they provide EDGX Top and/or EDGX Last Sale, the requirements for which are identical to that currently in place for the BATS One Feed.[16] Thus, the External Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. External Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of EDGX Top or EDGX Last Sale, the Distributor should count as one User each unique User that the Distributor has entitled to have access to EDGX Top or EDGX Last Sale. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to EDGX Top or EDGX Last Sale, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to EDGX Top or EDGX Last Sale (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.
- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor

[7] An ''Internal Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.'' *See* the Exchange Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.* A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *Id.*

[8] A ''User'' is defined as ''a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.'' *Id.*

[9] An ''External Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.'' *Id.*

[10] The Exchange notes that EDGA Exchange, Inc. (''EDGA''), BATS Y-Exchange, Inc. (''BYX'') and BATS Exchange, Inc. (''BZX'', together with the Exchange, EDGA and BYX, the ''BATS Exchanges'') also filed proposed rule changes with Commission to adopt similar fees for their respective Top and Last Sale market data product. *See* File Nos. SR–EDGA–2015–25, SR–BYX–2015–30, and SR–BATS–2015–48. The Exchange represents that the proposed fees will not cause the combined cost of subscribing to each of the BATS Exchanges' individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the BATS One Feed. *See* Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); *and* 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09) (''Initial BATS One Feed Fee Filings''). In these filings, the Exchange represented that the cost of subscribing to each of the underlying individual feeds necessary to create the BATS One Feed would not be greater than the cost of subscribing to the BATS One Feed. *Id.*

[11] A ''Professional User'' is defined as ''any User other than a Non-Professional User.'' *See* the Exchange Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[12] A ''Non-Professional User'' is defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section [202(a)(11)] of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.'' *Id.*

[13] The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by the BATS Exchanges and the Nasdaq Stock Market LLC (''Nasdaq''). *See* Securities Exchange Act Release No. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-Nasdaq-2008–102). *See also* the Initial BATS One Feed Fee Filings, *supra* note 10.

[14] The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by the Exchange, EDGA, BYX, BZX, Nasdaq, NYSE, and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); *and* 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04). *See also* the Initial BATS One Feed Fee Filings, *supra* note 10.

[15] The Exchange notes that EDGA, BYX and BZX also filed proposed rule changes with Commission to adopt User fees for their respective Top and Last Sale market data product. *See* File Nos. SR–EDGA–2015–25, SR–BYX–2015–30, and SR–BATS–2015–48 (proposing a monthly fee of $2.00 per Professional User and of $0.05 per Non-Professional User for EDGA and BYX and a monthly fee of $4.00 per Professional User and of $0.10 per Non-Professional User for BZX). A vendor that wishes to create a product like the BATS One Summary Feed could subscribe to each of the BATS Exchanges' Top and Last Sale feeds. *See* the Initial BATS One Feed Fee Filings, *supra* note 10. Should a vendor subscribe to each of the BATS Exchanges' Top and Last Sale feeds, it would be charged a total of $10.00 per month per Professional User and $0.25 per month per Non-Professional User. This amount is equal to, and not greater than the User Fees charged for the BATS One Summary Feed. *Id.* (adopting fees of $10.00 per month per Professional User and $0.25 per month per Non-Professional User as well as a separate $1,000 per month Data Consolidation Fee for the BATS One Summary Feed).

[16] *See* the Initial BATS One Feed Fee Filings, *supra* note 10.

Fee for EDGX Top or EDGX Last Sale equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for EDGX Top or EDGX Last Sale. For example, an External Distributor will be subject to a $1,250 monthly Distributor Fee where they elect to receive EDGX Top. If that External Distributor reports User quantities totaling $1,250 or more of monthly usage of EDGX Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $1,000 of monthly usage, it will pay a net of $250 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. The same would apply to receipt of EDGX Last Sale.

Enterprise Fee. The Exchange also proposes to establish a $15,000 per month Enterprise Fee that will permit a recipient firm who receives EDGX Top or EDGX Last Sale from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users.[17] For example, if a recipient firm had 15,000 Professional Users who each receive EDGX Top or EDGX Last Sale at $2.00 per month, then that recipient firm will pay $30,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $15,000 for an unlimited number of Professional and Non-Professional Users for EDGX Top or EDGX Last Sale. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of EDGX Top or EDGX Last Sale if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Lastly, the proposed Enterprise Fee would be counted towards the Distributor Fee credit described above, under which an External Distributor receives a credit towards its Distributor Fee equal to the amount of its monthly EDGX Top or EDGX Last Sale usage fees.

Digital Media Enterprise Fee. The Exchange proposes to adopt a Digital Media Enterprise Fee of $2,500 per month for EDGX Top and EDGX Last Sale.[18] As an alternative to proposed User fees discussed above, a recipient firm may purchase a monthly Digital Media Enterprise license to receive EDGX Top and EDGX Last Sale from an External Distributor to distribute to an unlimited number of Professional and Non-Professional Users for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. Lastly, the proposed Digital Media Enterprise Fee would be counted towards the Distributor Fee credit described above, under which an External Distributor receives a credit towards its Distributor Fee equal to the amount of its monthly EDGX Top and/or EDGX Last Sale usage fees.

Non-Substantive, Corrective Changes

The Exchange proposes to make a non-substantive change to the description of the BATS One Feed Enterprise Fee as well as correct a cross-reference within the definition of ''Non-Professional User''.

First, the proposed change to the description of the BATS One Feed[19] Enterprise Fee is intended to align with the descriptions of the Enterprise Fees for EDGX Top and EDGX Last Sale proposed above. The fee schedule currently states that:

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

The Exchange proposes to delete the last sentence of the above description stating that the Enterprise Fee is in addition to the Distributor Fee. The original purpose of this sentence was to clarify that the Distributor Fee and Enterprise Fee were separate fees. However, the Exchange understands that this sentence has led to confusion for the following reason. As is the case for the proposed Enterprise Fees for EDGX Top and EDGX Last Sale described above, the BATS One Feed Enterprise Fee is counted towards the Distributor Fee credit, under which an External Distributor receives a credit towards its Distributor Fee equal to the amount of its monthly BATS One Feed Usage Fees. Stating that the Enterprise and Distributor fees were separate fees has caused confusion regarding the application of the Distributor Fee Usage Fee credit. Therefore, the Exchange proposes to delete the last sentence stating that the Enterprise Fee is in addition to the Distributor Fee. Deleting this sentence does not alter the manner in which the Enterprise Fee is charged. Rather, it is intended to avoid confusion and align the description with that of the proposed Enterprise Fees for EDGX Top and EDGX Last Sale described above.

Second, the Exchange proposes to correct a cross-reference within the

[17] The Exchange notes that EDGA, BYX and BZX also filed proposed rule changes with Commission to adopt Enterprise Fees for their respective Top and Last Sale market data product. File Nos. SR–EDGA–2015–25, SR–BYX–2015–30, and SR–BATS–2015–48 (proposing a monthly Enterprise Fee of $15,000 for BZX Top and BZX Last Sale and $10,000 for EDGA Top and Last Sale as well as BYX Top and Last Sale). A vendor that wishes to create a product like the BATS One Summary Feed could subscribe to each of the BATS Exchanges' Top and Last Sale feeds. *See* the Initial BATS One Feed Fee Filings, *supra* note 10. Should a vendor subscribe to each of the BATS Exchanges' Top and Last Sale feeds, it would be charged a total monthly Enterprise Fee of $50,000. This amount is equal to, and not greater than the Enterprise Fee charged for the BATS One Summary Feed. *Id.* (adopting a monthly Enterprise Fee of $50,000 as well as a separate $1,000 per month Data Consolidation Fee for the BATS One Summary Feed).

[18] The Exchange notes that EDGA, BYX and BZX also filed proposed rule changes with Commission to adopt a Digital Media Enterprise Fee for their respective Top and Last Sale market data product. *See* File Nos. SR–EDGA–2015–25, SR–BYX–2015–30, and SR–BATS–2015–48 (proposing a monthly Digital Media Enterprise Fee of $2,500 for their respective Top and Last Sale feeds). A vendor that wishes to create a product like the BATS One Summary Feed could subscribe to each of the BATS Exchanges' Top and Last Sale feeds. *See* the Initial BATS One Feed Fee Filings, *supra* note 10. Should a vendor subscribe to each of the BATS Exchanges' Top and Last Sale feeds, it would be charged a total monthly Digital Media Enterprise Fee of $10,000. This amount is less than the Digital Media Enterprise Fee charged for the BATS One Summary Feed. *See* Securities Exchange Act Release Nos. 74598 (March 27, 2015), 80 FR 17791 (April 2, 2015) (SR–BATS–2015–24); 74599 (March 27, 2015), 80 FR 17812 (April 2, 2015) (SR–BYX–2015–19); 74600 (March 27, 2014), 80 FR 17797 (April 2, 2015) (SR–EDGA–2015–14); *and* 74601 (March 27, 2015), 80 FR 17804 (April 2, 2015) (SR–EDGX–2015–14) (adopting a monthly Digital Media Enterprise Fee of $15,000 for the BATS One Summary Feed).

[19] In sum, the BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGX and its affiliated exchanges and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). In addition, the BATS One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels (''BATS One Premium Feed''). *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (''BATS One Approval Order'').

definition of ''Non-Professional User''. In part, a ''Non-Professional User'' is currently defined as ''a natural person who is not: . . . engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act) . . .'' The definition incorrectly states that the term ''investment adviser is defined under Section 201(11) of the Investment Advisers Act of 1940, when it is, in fact, defined under Section 202(a)(11) of the Investment Advisers Act of 1940. Therefore, the Exchange proposes to replace the reference to Section 201(11) with Section 202(a)(11) within the definition of Non-Professional User.

Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on July 1, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[20] in general, and furthers the objectives of Section 6(b)(4),[21] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [22] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[23] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGX Last Sale and EDGX Top are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGX Top and EDGX Last Sale further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGX Top or EDGX Last Sale, prospective Users likely would not subscribe to, or would cease subscribing to, the EDGX Top or EDGX Last Sale.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[24]

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for EDGX Top and EDGX Last Sale is equitable and reasonable because it will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for EDGX Top and EDGX Last Sale is reasonable because it provides an additional method for retail investors to access EDGX Top and EDGX Last Sale data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the BATS One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[25] Offering EDGX Top and EDGX Last Sale to Non-Professional Users with the same data available to

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78k–1.

[23] *See* 17 CFR 242.603.

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

[25] *See* the Initial BATS One Feed Fee Filings, *supra* note 10. *See also, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE. Specifically, NYSE offers NYSE BBO, which includes best bid and offer for NYSE traded securities, for a monthly fee of $4.00 per professional subscriber and $0.20 per non-professional subscriber.[26] NYSE also offers NYSE Trades, which is a data feed that provides the last sale information for NYSE traded securities, for the same price as NYSE BBO. The Exchange's proposed per User Fees for EDGX Top and EDGX Last Sale are less than the NYSE's fees for NYSE Trades and NYSE BBO.

Enterprise Fee. The proposed Enterprise Fee for EDGX Top and EDGX Last Sale are equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for NYSE Trades and NYSE BBO. The NYSE charges a separate enterprise fee of $190,000 per month for NYSE Trades and NYSE BBO.[27] In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of EDGX Top or EDGX Last Sale, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the EDGX Top or EDGX Last Sale, thereby expanding the distribution of this market data for the benefit of investors.

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

Digital Media Enterprise Fee. The Exchange believes that the proposed Digital Media Enterprise Fee for EDGX Top and EDGX Last Sale provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display EDGX Top and/or EDGX Last Sale data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from EDGX Top and EDGX Last Sale to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $15,000 per month for to receive EDGX Top and/or EDGX Last Sale from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the proposed Digital Media Enterprise Fee. The Exchange also believes the amount of the Digital Media Enterprise Fee is reasonable as compared to the existing enterprise fees discussed above because the distribution of EDGX Top and EDGX Last Sale data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of EDGX Top and EDGX Last Sale data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise Fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[28]

Non-Substantive, Corrective Changes. The Exchange believes that the proposed non-substantive, corrective changes are consistent with Section 6(b) of the Act,[29] in general, and Section 6(b)(4) of the Act,[30] in particular, in that they provide for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. These proposed changes are equitable and reasonable because the changes are designed to clarify the fee schedule and avoid potential investor confusion. The amendment to the BATS One Enterprise Fee is also intended to align the description with that of the proposed Enterprise Fees for EDGX Top and EDGX Last Sale described above. The proposed changes are also non-discriminatory as they would apply to all recipient firms uniformly.

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

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

EDGX Top and EDGX Last Sale

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

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It

[26] *See* NYSE Market Data Pricing dated May 2015 *available at http://www.nyxdata.com/.*

[27] *Id.*

[28] The Nasdaq Stock Market offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of $50,000 per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(4).

competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

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

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

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

Non-Substantive, Corrective Changes

The proposed non-substantive, corrective changes to the fee schedule will not have any impact on completion. The proposed changes are designed to clarify the fee schedule and avoid potential investor confusion.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the 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–2015–28 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGX–2015–28. 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 such 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–2015–28, and should be submitted on or before August 4, 2015.

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

Brent J. Fields,

Secretary.

[FR Doc. 2015–17175 Filed 7–13–15; 8:45 am]

BILLING CODE 8011–01–P

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

[32] 17 CFR 240.19b–4(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75390; File No. SR–EDGA–2015–26]

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

July 8, 2015.

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 June 26, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.