

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹² The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can establish this process prior to the Russell Reconstitution on June 28, 2013 and notes that there is significant benefit to investors from providing certainty prior to that date. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule will provide certainty regarding the contingency procedures to market participants prior to the date of the Russell Reconstitution. Therefore, the Commission designates the proposal operative upon filing.¹³

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.

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-2013-090 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2013-090. 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 offices of NASDAQ. 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-2013-090, and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-15931 Filed 7-2-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69870; File No. SR-EDGX-2013-17]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the EDGX Exchange, Inc.'s Routing Broker Dealer, as Described in EDGX Rule 2.12(b)

June 27, 2013.

I. Introduction

On May 16, 2013, EDGX Exchange, Inc. ("EDGX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the existing pilot program that permits the Exchange's inbound router, as described in Rule 2.12(b), to receive inbound routes of equities orders through Direct Edge ECN LLC d/b/a DE Route ("DE Route"), the Exchange's routing broker dealer, from EDGA Exchange, Inc. ("EDGA"). The proposed rule change was published for comment in the **Federal Register** on May 28, 2013.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

DE Route is a registered broker-dealer that is a member of the Exchange and is permitted to provide members of EDGA optional routing services to other trading centers.⁴ DE Route is owned by Direct Edge Holdings LLC ("DE Holdings"). DE Holdings also owns two registered securities exchanges—the Exchange and EDGA.⁵ Thus, DE Route is an affiliate of the Exchange and EDGA.⁶

On May 12, 2010, the Commission approved the Exchange's application for registration as a national securities

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² *Id.*

¹³ For purposes only 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).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69614 (May 21, 2013), 78 FR 31994 ("Notice").

⁴ DE operates as a facility of EDGA that provides outbound routing from EDGA to other trading centers, subject to certain conditions. See Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File No. 10-194 and 10-196) (order granting the exchange registration of EDGA and EDGX.) ("Exchange Registration Approval Order").

⁵ See *id.*

⁶ See Exchange Registration Approval Order, 75 FR at 13165 n.219 and accompanying text.

exchange.⁷ As part of the approval, the Exchange was approved to receive inbound routes of orders that DE Route routes in its capacity as a facility of EDGA on a pilot basis for 12 months.⁸ The pilot was originally set to expire on July 1, 2011, but was subsequently extended and is currently set to expire on June 30, 2013.⁹ The Exchange now seeks permanent approval of this inbound routing pilot.¹⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹² which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding

the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to DE Route's affiliation with the Exchange to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGA, on a pilot basis.¹⁴ The Exchange now seeks to make this pilot permanent, subject to the same limitation and conditions. Specifically, the Exchange committed to the following limitations and conditions:¹⁵

- The Exchange shall enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization ("SRO") to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract ("Regulatory Contract") with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.

- The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules.

- The Exchange, on behalf of DE Holdings, shall establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.¹⁶

The Exchange states that is has complied with the above-listed conditions during the pilot.¹⁷ The Exchange believes that by meeting such

conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, and has demonstrated that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage.¹⁸

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹⁹ Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit DE Route, in its capacity as a facility of EDGA, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.²⁰

The Exchange has proposed ongoing conditions applicable to DE Route's inbound routing activities in its capacity

¹⁸ See *id.*

¹⁹ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (order granting the exchange registration of BATS-Y Exchange, Inc.).

²⁰ The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. See, e.g., Securities Exchange Act Release Nos. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR-BX-2011-007); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR-BATS-2012-013); 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR-BYX-2012-006); 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030); 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR-NASDAQ-2013-028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR-BX-2013-013); and 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR-Phlx-2013-15).

⁷ See Exchange Registration Approval Order, 75 FR 13151.

⁸ See *id.*

⁹ See Securities Exchange Act Release Nos. 64361 (April 28, 2011), 76 FR 25388 (May 4, 2011) (SR-EDGX-2011-12); and 66644 (March 22, 2012), 77 FR 18877 (March 28, 2012) (SR-EDGX-2012-09).

¹⁰ See Notice, 78 FR 31996.

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(1).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See Exchange Registration Approval Order, 75 FR at 13165-13166.

¹⁵ See Notice, 78 FR at 31995.

¹⁶ The Commission notes that this condition is set forth in EDGX Rule 2.12(a)(3).

¹⁷ See Notice, 78 FR at 31995.

as a facility of EDGA, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of DE Route,²¹ combined with a non-affiliated SRO's monitoring of DE Route's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to DE Route. The Commission also believes that the Exchange's Rule 2.12(a)(3) is designed to ensure that DE Route cannot use any information advantage it may have because of its affiliation with the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-EDGX-2013-17) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69875; File No. SR-EDGX-2013-23]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.5(c), NBBO Offset Peg Order

June 27, 2013.

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 24, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 11.5(c)(15), the NBBO Offset Peg Order, to state that the order type will: (1) Only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered; (2) not be repriced when it would establish the National Best Bid or Offer ("NBBO"); and (3) delay the implementation date of the order type [sic] from April 15, 2013 to no later than October 31, 2013.

On September 25, 2012, the Exchange filed for immediate effectiveness a proposed rule change to adopt the NBBO Offset Peg Order.³ The NBBO Offset Peg Order will enable Users⁴ to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the

NBB and NBO, respectively, while providing them full control over order origination and order marking.⁵ This retention of control, in turn, is designed to allow Market Makers⁶ to comply independently with the requirements of Regulation SHO⁷ under the Act and Rule 15c3-5⁸ under the Act (the "Market Access Rule"). The Exchange subsequently amended the text of Rule 11.5(c)(15) to remove the ability of Users to cancel or reject NBBO Offset Peg Orders under certain circumstances.⁹

When is a NBBO offset peg order eligible for execution?

First, the Exchange proposes that the NBBO Offset Peg Order will only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered. Currently, Rule 11.5(c)(15) allows Users to submit NBBO Offset Peg Orders at the beginning of the Pre-Opening Session,¹⁰ but states that the order is not executable or automatically priced until the beginning of Regular Trading Hours.¹¹ However, a Market Maker's quoting obligations under Rule 11.21(d) do not commence during any trading day until after the first regular way transaction on the primary listing market in the security as reported by the responsible single plan processor.¹² Such a transaction may not occur until after the start of Regular Trading Hours. Therefore, the Exchange proposes to amend the text of Rule 11.5(c)(15) to state that an NBBO Offset Peg Order is not executable until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan

⁵ See EDGX Rule 11.5(c)(15).

⁶ "Market Maker" is defined as "a Member that acts as a Market Maker pursuant to Chapter XI." EDGX Rule 1.5(l).

⁷ 17 CFR 242.200 through 242.204.

⁸ 17 CFR 242.15c3-5.

⁹ See Securities Exchange Act Release No. 68596 (January 7, 2013), 78 FR 2477 (January 11, 2013) (SR-EDGX-2012-49) (notice of filing and immediate effectiveness).

¹⁰ "Pre-Opening Session" is defined as "the time between 8:00 a.m. and 9:30 a.m. Eastern Time." EDGX Rule 1.5(s).

¹¹ "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." EDGX Rule 1.5(y).

¹² Under Exchange Rule 11.21(d)(2), the pricing obligations for Market Makers "(i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor." Securities Exchange Act Release No. 65964 (December 15, 2011), 76 FR 79254 (December 21, 2011) (order approving SR-EDGX-2011-28).

²¹ This oversight will be accomplished through a 17d-2 Agreement. See Approval Order, 75 FR at 13165; and Notice, 78 FR at 31995.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR-EDGX-2012-44) (notice of filing and immediate effectiveness of the proposal to adopt the NBBO Offset Peg Order) ("EDGX Adopting Release").

⁴ "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." EDGX Rule 1.5(ee).