

December 4, 2009

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Nos. 10-193 and 10-194

Dear Ms. Murphy:

Credit Suisse Securities (USA) LLC (“Credit Suisse”) strenuously disagrees with a recommendation made by The Nasdaq OMX Group, Inc. (“NASDAQ OMX”) in its comment letter on the Notice of Filing of Applications, as Amended, by EDGX Exchange, Inc. (“EDGX”) and EDGA Exchange, Inc. (“EDGA”, and collectively with EDGX, the “Applicants”) for Registration as National Securities Exchanges under Section 6 of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009) (File Nos. 10-193 and 10-194) (the “Applications”). In particular, Credit Suisse disagrees with NASDAQ OMX’s recommendation in its comment letter dated November 11, 2009 that the Securities and Exchange Commission (the “Commission”) impose the ownership structure of exchanges on alternative trading systems (“ATS”).

In its letter, NASDAQ OMX raised concerns about the Applicants’ governance structure and the profile and concentration of its equity owners. As part of these concerns, NASDAQ OMX noted that most exchanges have Commission-imposed restrictions in their bylaws that place limits on the concentration of equity ownership by a single or coordinated group of broker-dealers or other persons. Nasdaq OMX requested that the Commission “re-examine these restrictions and adopt a consistent rule applicable to all exchanges (as well as alternative trading systems, which would be required to register as exchanges but for the exemption provided by Regulation ATS).”

Credit Suisse does not believe that rules or restrictions on the ownership structure of an ATS are necessary. Any such rules would violate the intent of Regulation ATS. Regulation ATS was adopted to refine the definition of “exchange” and offer an exemption from the definition of “exchange” for entities for whom the full exchange regulatory structure is not appropriate. It offers ATSS the option to register as a national securities exchange, or register as a broker-dealer and comply with additional market-oriented requirements under Regulation ATS that are appropriate for all trading systems. Significantly, any ATS that exercises “self-regulatory-like” powers over the conduct of its participants off the trading system are required to register as exchanges. Moreover, the Commission has reserved authority to require dominant ATSS to register as

exchanges. Exchange ownership restrictions are intended to prevent the abuse of self-regulatory power or a dominant position by owners of exchanges. These restrictions are not needed or fitting for non-self regulatory, non-dominant ATSS.

Ownership restrictions are inconsistent with Regulation ATS's stated purpose to "encourage market innovation." In adopting Regulation ATS, the Commission stated that "its regulation of markets should both accommodate traditional market structures and provide sufficient flexibility to ensure that new markets promote fairness, efficiency and transparency" Exchange Act Release No. 40760 (Dec. 8, 1998). Ownership restrictions would prevent a broker-dealer or a small group of broker-dealers from initiating a new trading system, restricting competition by new entrants unless they were able to raise support from a broad range of market participants (or *non*-participants, if the Nasdaq-supported amendment to the House financial services legislation were to apply).

To grow, an ATS must attract order flow from a wide range of market participants, just like an exchange. But at the start, a new ATS needs the sponsorship of an owner or group of owners that are committed to the innovations that the ATS offers. Historically, exchanges were formed by groups of broker-dealers that needed to congregate at a physical location to trade securities. In recent decades, most new equity exchanges other than Nasdaq itself -- Cincinnati, Island, Arca, ISE, BATS, and Direct Edge -- have been initiated by a broker-dealer or a small group of broker-dealers as an electronic trading system, before registering as, or merging with, an exchange. And most of the new trading systems in the securities markets have been developed by ATSS. Imposing ownership restrictions on ATSS would block this process of innovation.

Ownership restrictions also are inconsistent with the *structure* of Regulation ATS. ATSS are *required* to be a broker-dealer, or be operated by a broker-dealer. By definition and intent, an ATS is controlled by a broker-dealer, which enables the Commission and FINRA to easily examine its activities. The Nasdaq OMX comment letter would have the Commission either explode this structure or make it available to exchanges who stand in a very different position as self-regulators.

Ownership restrictions are also unnecessary because of the current oversight of ATSS. ATSS closely monitor use of their systems for practices that might bring discredit on the ATS. In addition, ATSS that register as broker-dealers are required to be FINRA members and are subject to extensive oversight by FINRA. FINRA conducts regular and rigorous exams of broker-dealers, and as part of the annual FINRA Market Making Examinations (formerly known as "TMMS") includes a review of ATS activity. Thus, the concerns raised by NASDAQ OMX about inadequate surveillance and enforcement of ATS activities are not accurate.

If ATSS need to be treated as exchanges for purposes of ownership restrictions, they should also be granted the advantages currently restricted to exchanges: sharing market

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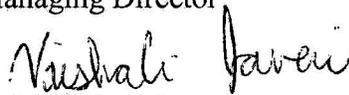
data revenues; reduced clearing costs; quotes protected from trade-throughs; freedom from net capital and customer protection requirements; and freedom from FINRA membership fees. The competitive balance achieved in Regulation ATS extends far beyond restrictions on ownership.

While Credit Suisse appreciates and supports the Commission's review of the market structure issues raised by ATSs that operate as dark pools, we strongly believe that purpose of ATSs as designed by the Commission carries out the exact goals the Commission espoused. ATSs have been responsible for most of the major innovations in the securities markets in the last 10 years, a result clearly intended by the Commission in the adoption of Reg ATS. There is and should be room in the U.S. securities markets for more than a 'one size fits all' exchange model that prevailed in the 19th century and exists nowhere else today. Therefore, we oppose any rules governing ATS ownership structure.

Respectfully submitted,



Daniel Mathisson
Managing Director



Vaishali Javeri
Director & Counsel

cc: Hon. Mary L. Shapiro, Chairman
Hon. Kathleen L. Casey, Commissioner
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Parades, Commissioner
Mr. Robert W. Cook, Director, Division of Trading and Markets
Mr. James Brigagliano, Deputy Director, Division of Trading and Markets
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Mr. Michael Gaw, Assistant Director, Division of Trading and Markets