June 15, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission 100 F. Street N.E.
Washington, D.C. 20549-1090

RE: Release No. 34-80841; File No. SR-BatsEDGX-2017-25 – EDGX Non-Displayed Swap

Dear Mr. Fields:

Themis Trading appreciates the opportunity to comment on the above referenced proposed rule change in which the Bats EDGX Exchange seeks to add functionality known as the Non-Displayed Swap ("NDS") functionality.

According to the proposal, the NDS functionality would be an optional order instruction which would allow users to have their resting non-displayed orders execute against an incoming order with a Post Only instruction rather than have it be locked by the incoming order. The order with a NDS instruction is converted to an executable order and will **remove** liquidity against such incoming order. However, even though the NDS hidden order was received first, it will be considered the liquidity taker and could potentially pay an access fee rather than receive a rebate. The access fee/rebate details were not made clear in the proposal. We have a number of questions about this new NDS order instruction:

Who would use such an order type?

Since many broker algorithms are set up to minimize cost, we doubt they would be want to forego a rebate and instead pay an access fee. However, if a broker is using a cost-plus model where all access fees and rebates are passed through to the client, then they would be indifferent to the access fee. The client would be charged the access fee and the pass through fee. (note: since EDGX has not commented on how they will price the NDS order, we are unsure how much or if they will charge the liquidity taking hidden order).

Would a client even know if there order that is being routed through a broker has the NDS instruction attached?

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This is an optional instruction but we suspect that many clients that use broker algorithms might not know that their order is being tagged with a NDS instruction. Their broker would need to inform them that they are adding the NDS instruction.

Can a hidden limit order with an NDS instruction jump the queue of similarly priced hidden orders without the NDS instruction?

Yes. As described in the proposal, if a post-only order enters the book, it will trade with the NDS order (even if it is placed after the non-NDS order) and not the non-NDS hidden order since the NDS order is willing to pay the access fee. This queue jumping within an exchange seems to violate price/time priority rules.

Why was this proposal considered non-controversial and allowed to be immediately effective?

We believe the NDS instruction changes queue priority and potentially distorts order routing. Therefore, this proposal should be considered controversial.

Why do post-only orders even exist?

The post-only order goes back many years and has been the source of controversy for a long time. Post-only orders are mainly used by electronic market makers and proprietary traders to avoid access fees. For years, the exchanges leaked information about hidden order flow since they would slide the price of the post-only order to prevent it from interacting with a hidden order. They did this so the post-only order would avoid paying an access fee. But recently, exchanges changed the way hidden orders and post-only orders interacted to no longer leak hidden information. This has resulted in numerous locked markets and now exchanges like EDGX are trying to come up with creative order instructions to unlock these markets.

While this comment letter is about the NDS instruction, **the real issue here is the post-only order type**. When Nasdaq changed the way they handled post-only orders last year, we wrote a comment letter to the SEC expressing the need to eliminate post-only order types:

> "Our markets have morphed today so that technology is leveraged to bring the maximum amount of intermediation between natural investors. The time has come for the SEC to acknowledge this, and reverse it. The Commission can begin by not approving Nasdaq's proposal to change how they handle post-only orders. **Rather than approve the proposal, we think that the Commission should eliminate all**

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post-only order types, instead of allowing them to continue to wreak havoc on the simple price discovery mechanism."

We would like to reiterate our request for the SEC to eliminate all post-only order types. Exchange access fees should not prevent the matching of orders. While EDGX attempts to solve this problem with their proposed NDS instruction, we believe that their attempt will further complicate the order routing process.

Sincerely,

Joseph Saluzzi and Sal Arnuk

Partners, Themis Trading LLC