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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75824; File No. SR-EDGX-2015-40)

September 3, 2015

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.21(d), Relating to the Routing of Retail Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 31, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it 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 Rule 11.21(d) to state that unless otherwise instructed by the Member,<sup>5</sup> a Retail Order<sup>6</sup> will be identified as Retail when

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange. A member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer

routed to an away Trading Center, including an exchange that operates a retail liquidity program.

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](http://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

Exchange Rule 11.21 defines a Retail Order and sets forth the attestation requirements<sup>7</sup> that Members must complete prior to sending Retail Orders to the

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pursuant to Section 15 of the Act, and which has been approved by the Exchange." See Exchange Rule 1.5(n).

<sup>6</sup> The term "Retail Order" "(i) is an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) does not originate from a trading algorithm or any other computerized methodology." See Exchange Rule 11.21(a).

<sup>7</sup> Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a "Retail Order" comply with the above requirements. See Exchange Rule 11.21(b).

Exchange. Rule 11.21(d) also provides that Members may designate orders as Retail Orders on an order-by-order basis or a port level basis by designating particular FIX ports as Retail Order Ports.<sup>8</sup> Going forward, the Exchange proposes to identify Retail Orders as Retail when they are routed to an away Trading Center, including an exchange that operates a retail liquidity program.<sup>9</sup> As amended, Rule 11.21(d) would state that, unless otherwise instructed by the Member, a Retail Order will be identified as Retail when routed to an away Trading Center. As stated above, Members may designate their orders as Retail in accordance with Rule 11.21(b) for purposes of order handling on the EDGX Book. Under the proposed rule change, Members would be able to instruct the Exchange to remove such Retail designation from their Retail Orders when such orders are routed to an away Trading Center.

#### Implementation Date

The Exchange proposes to implement the proposed rule change on or about

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<sup>8</sup> See Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR-EDGX-2012-48) (Notice of Filing and Immediate Effectiveness).

<sup>9</sup> Currently, BATS Y-Exchange, Inc. (“BYX”), the New York Stock Exchange, Inc. (“NYSE”), NYSE MKT LLC (“NYSE MKT”), NYSE Arca, Inc. (“NYSE Arca”), and the Nasdaq Stock Market OMX BX LLC (“Nasdaq OMX BX”) operate retail liquidity programs. See BYX Rule 11.24, NYSE Rule 107C, NYSE MKT – Equities Rule 107C, NYSE Arca Equities Rule 7.44, and Nasdaq OMX BX Rule 4780. These exchange’s also require their members to submit a signed written attestation, in a form prescribed by that exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as a “Retail Order” as defined by that exchange. *Id.* Each exchange would be required to file a proposed rule change with the Commission to amend its definition of “Retail Order.” To the extent the Exchange routes an order identified as Retail to participate in an exchange’s retail liquidity program, it will ensure that it does so in compliance with that exchange’s rules governing its retail liquidity program, including that the order satisfies that exchange’s definition of “Retail Order.”

September 10, 2015.<sup>10</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade because enabling Members to identify their Retail Orders as Retail when they are routed to an away Trading Center, including exchanges that operate a retail liquidity program, would allow those orders to receive the best execution quality and potential price improvement. The proposal also promotes transparency by disseminating additional order information. In addition, providing Members the ability to elect that their routed Retail Order not be identified as Retail [sic] provides Member flexibility with regard to the handling of their Retail Orders by permitting them to elect that their Retail Order not be identified as Retail when routed to an away Trading Center.

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

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposal would enhance competition for retail order flow by

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<sup>10</sup> The Exchange understands that implementation of the proposed rule change on September 10, 2015 is contingent upon the Commission waiving the 30-day operative delay. 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

enabling Members to identify their Retail Orders as Retail when they are routed to an away Trading Center, including exchanges that operate a retail liquidity program.

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 unsolicited written comments from Members or other interested parties.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. 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. The Exchange has asked the Commission to waive the

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would permit the Exchange to identify Retail Orders as Retail when routed to an away Trading Center, including exchanges that operate a retail liquidity program, enabling the orders to receive potential price improvement. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>16</sup> The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2015-40 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-2015-40. This file number should be included on the subject line if e-mail 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 website (<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 website 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-2015-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Robert W. Errett  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).