

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71776; File No. SR- EDGA-2014-05)

March 24, 2014

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add a Reference to Rule 10C-1 Under the Exchange Act in EDGA Rule 14.1 Concerning Unlisted Trading Privileges

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 March 12, 2014, 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 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Exchange Rule 14.1 to make clear that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C-1 under the Act (“Rule 10C-1”). The text of the proposed rule change is available on the Exchange’s Internet website at [www.directedge.com](http://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

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

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

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 Exchange Rule 14.1 to make clear that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C-1.

On March 30, 2011, to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,<sup>3</sup> the Commission proposed Rule 10C-1 under the Act,<sup>4</sup> which directs each national securities exchange to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C-1.<sup>5</sup>

Exchange Rule 14.1 states that the Exchange extends unlisted trading privileges (“UTP”) to equity securities listed on another national securities exchange.<sup>6</sup> Rule 14.1 further states that, should the Exchange wish to permit the listing of equity securities, pursuant to Rules 14.2 through 14.9, it must first file a proposed rule change with the Commission amending its rules to comply with Rule 10A-3 under the Act, among other requirements.<sup>7</sup> Accordingly, the Exchange

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<sup>3</sup> Public Law 111-203, 124 Stat. 1900 (2010).

<sup>4</sup> See Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) (“Rule 10C-1 Proposing Release”).

<sup>5</sup> See 17 CFR 240.10C-1 and Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) (“Rule 10C-1 Adopting Release”).

<sup>6</sup> See Exchange Rule 14.1.

<sup>7</sup> Id.

proposes to add a reference to Rule 10C-1 under the Act, which requires securities exchanges that list equity securities to adopt rules relating to the independence of compensation committees and their advisers.<sup>8</sup> In particular, the following change will be made to the text of Rule 14.1(a) (proposed text to be added is underlined):

Therefore, the provisions of Rules 14.2 through 14.9 that permit the listing of Equity Securities other than common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, American Depositary Receipts (“ADRs”), and contingent value rights (“CVRs”) will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The rule change will promote these goals by clarifying further the intent of Rule 14.1, which exists to permit the Exchange to extend UTP to stocks that

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<sup>8</sup> 17 CFR 240.10C-1.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

are listed on another national securities exchange pursuant to Section 12(f) of the Act.<sup>11</sup> The proposed amendments to Rule 14.1 emphasize that the Exchange will not list securities pursuant to Rules 14.2 through 14.9 until it proposes certain rule changes and those changes are approved by the Commission. The Exchange believes the proposed rule change is consistent with the protection of investors because it clarifies the fact that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C-1, which implements Section 10C of the Act. These clarifications will also serve to protect investors and the public interest by preventing confusion about the intent of Rule 14.1.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change simply requires the codification of standards to which compensation committees of listed companies will be held should such companies choose to list their securities on the Exchange if the Exchange were to become a relevant listing exchange.

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

No written comments were solicited or received with respect to 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)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given 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, or such shorter time as designated by the Commission.

The Exchange provided the Commission with 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 (5) business days prior to the date of filing.<sup>14</sup> The Exchange has satisfied this requirement [sic].

The Exchange believes that the proposed rule change meets the requirements of Rule 19b-4(f)(6).<sup>15</sup> Specifically, the proposal does not significantly affect the protection of investors or the public interest because it simply requires the codification of standards to which compensation committees of listed companies will be held if the Exchange were to become a listing market. Further, it does not involve any novel or complex issue and is substantially similar to the UTP listing rules of the BATS-Y Exchange, Inc. (“BYX”).<sup>16</sup> Furthermore, the proposed rule change benefits investors in that it increases transparency for investors and promotes responsible corporate governance by requiring the codification of standards for compensation committees of listed companies should the Exchange become a primary listing

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> See BYX Rule 14.1. Securities Exchange Act Release No. 70623 (October 8, 2013), 78 FR 6277 (October 22, 2013).

exchange. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2014-05 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-EDGA-2014-05. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

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 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-EDGA-2014-05, 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>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).