

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73797; File No. SR-EDGA-2014-32)

December 9, 2014

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 1.5 and 11.3 of EDGA Exchange, Inc.

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 November 28, 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 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 Rules 1.5(z), the definition of Sponsored Participant,<sup>5</sup> and 11.3, titled Access, to harmonize its sponsored access rules and definitions with those set forth under BATS Exchange, Inc. (“BATS”) Rules 1.5(x) and 11.3 as well as BATS Y-

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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> As defined below.

Exchange, Inc. (“BYX”) Rules 1.5(x) and 11.3.<sup>6</sup>

The text of the proposed rule change is available at the Exchange’s website at <http://www.directedge.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

The Exchange proposes to amend Rules 1.5(z) and 11.3 to harmonize its sponsored access rules with those set forth under BATS Rules 1.5(x) and 11.3 and BYX Rules 1.5(x) and 11.3.<sup>7</sup> Earlier this year, the Exchange and its affiliate EDGX Exchange, Inc. (“EDGX”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BATS and BYX (together with BATS, BYX, EDGA and EDGX, the “BGM Affiliated Exchanges”).<sup>8</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only

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<sup>6</sup> See BATS Rules 1.5(x) and 11.3; BYX Rules 1.5(x) and 11.3.

<sup>7</sup> See supra note 5.

<sup>8</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

intended differences between the BGM Affiliated Exchanges. As part of this effort, the proposal set forth below harmonizes Exchange Rules 1.5(z) and 11.3 with BATS and BYX Rules 1.5(x) and 11.3 by aligning the rules around sponsored access for all sponsored participants and sponsoring members of the BGM Affiliated Exchanges.<sup>9</sup>

Rule 11.3 currently provides that the System<sup>10</sup> shall be available for entry and execution of orders by Users with authorized access. In order to obtain authorized access to the System, each Member must enter into an agreement with the Exchange in such form as the Exchange may provide. A Sponsored Participant<sup>11</sup> may obtain authorized access to the System only if such access is authorized in advance by one or more Sponsoring Members<sup>12</sup> as follows: (i) Sponsored Participants must enter into and maintain sponsored or direct access arrangements with one or more Sponsoring Members establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the System; (ii) Sponsoring Member shall maintain a list of Sponsored Participants who Sponsoring Member has authorized to obtain access to the System pursuant to this Rule, shall update the list of Sponsored Participants as necessary, and provide the list of Sponsored Participants to the Exchange upon request; and (iii) Sponsoring Members shall comply with Rule 15c3-5 under the Exchange Act (the “Market Access Rule”)<sup>13</sup> with regard to market access arrangements with Sponsored Participants.

The Exchange is proposing to delete Rules 11.3(b)(2) and (3), which are described in

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<sup>9</sup> The Exchange understands that EDGX is to file a proposed rule change with the Commission to adopt similar requirements.

<sup>10</sup> System is defined in EDGA Rule 1.5(cc).

<sup>11</sup> Sponsored Participant is defined in EDGA Rule 1.5(z).

<sup>12</sup> Sponsoring Members is defined in EDGA Rule 1.5(aa).

<sup>13</sup> 17 CFR 240.15c3-5.

items (ii) and (iii) above. The Exchange is proposing to delete 11.3(b)(2) in order to add more thorough requirements for a Member to provide sponsored access to a Sponsored Participant, as described below. The Exchange is proposing to delete Rule 11.3(b)(3) in order to align the Exchange's rules with those of BATS and BYX. The Exchange notes that, while Rule 11.3(b)(3) requires a Sponsoring Member to comply with the Market Access Rule, such obligation applies to all brokers or dealers with market access<sup>14</sup> and thus exists whether or not the Exchange has a rule requiring compliance. As such, deleting current Rule 11.3(b)(3) does not alter a Member's or a Sponsored Participant's obligation to comply with the Market Access Rule.

The Exchange is also proposing to amend Rule 11.3(b)(1) in order to replace "sponsored or direct access arrangements" with "customer agreements." In coordination with this change, the Exchange is also proposing to add the following sentence to the end of Rule 11.3(b)(1): "Such customer agreement(s) must incorporate the sponsorship provisions set forth in paragraph (2) below."

The Exchange is also proposing to add a new Rule 11.3(b)(2), which contains the requirements for the customer agreements referenced in proposed Rule 11.3(b)(1). As proposed, in order for a Sponsored Participant to obtain and maintain authorized access to the System, a Sponsored Participant and its Sponsoring Member must agree in writing to the following sponsorship provisions: (i) the Sponsored Participant and its Sponsoring Member must have entered into and maintained a User Agreement with the Exchange; (ii) the Sponsoring Member must acknowledge and agree that all orders entered by the Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member, and the Sponsoring

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<sup>14</sup> 17 CFR 240.15c3-5(b).

Member is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant; (iii) the Sponsoring Member shall comply with the Exchange's Certificate of Incorporation, By-Laws, Rules and procedures, and the Sponsored Participant shall comply with the Exchange's Certificate of Incorporation, By-Laws, Rules and procedures, as if such Sponsored Participant were a Member; (iv) the Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member, and to the Exchange upon request, a list of Authorized Traders who may obtain access to the System on behalf of the Sponsored Participant. Sponsored Participant shall be subject to the obligations of Rule 11.4 with respect to such Authorized Traders;<sup>15</sup> (v) the Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the System; (vi) the Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the System; (vii) the Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the System, including unauthorized entry of information into the System, or the information and data made available therein. The Sponsored Participant understands and agrees that the Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof; (viii) the Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and customers' use and access to the System for compliance with the terms of this agreement; and (ix) the Sponsored Participant shall pay when

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<sup>15</sup> See EDGA Rule 11.4.

due all amounts, if any, payable to Sponsoring Member, the Exchange or any other third parties that arise from the Sponsored Participant's access to and use of the System. Such amounts include, but are not limited to applicable exchange and regulatory fees.

The Exchange is also proposing to replace Rule 11.3(b)(3) to state that the Sponsoring Member must provide the Exchange with a written statement in form and substance acceptable to the Exchange identifying each Sponsored Participant by name and acknowledging its responsibility for the orders, executions and actions of such Sponsored Participant. Such written statement in form and substance acceptable to the Exchange will be available as the "Sponsored Application and Agreements" form on the Exchange's website.<sup>16</sup>

Finally, the Exchange is proposing to amend Rule 1.5(z) to align the definition of Sponsored Participant with the definition on BATS and BYX<sup>17</sup> and to align the definition with the relationship between a Sponsoring Member, Sponsored Participant, and the Exchange, as proposed above. Specifically, the Exchange is proposing that the term Sponsored Participant mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.

The Exchange notes that this proposal would in effect restore Exchange Rules 1.5(z) and 11.3 to their state prior to filing SR-EDGA-2012-24 (the "Filing").<sup>18</sup> In the Filing, the Exchange described the rationale for the proposed changes as being rendered superfluous and unnecessary by the adoption of Market Access Rule. Such changes, in contrast to the rules on BATS and BYX, however, created a situation in which the Exchange still had Sponsored Participants that

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<sup>16</sup> The Exchange's website is accessible at [www.directedge.com](http://www.directedge.com).

<sup>17</sup> See supra note 5.

<sup>18</sup> See Securities Exchange Act Release No. 67712 (August 22, 2012), 77 FR 52097 (August 28, 2012) (SR-EDGA-2012-27).

were entering orders through Sponsoring Members, but the Exchange had no direct relationship with Sponsored Participants. In certain circumstances, this arrangement led to employees of the Exchange being unable to discuss certain order and/or trade details with Sponsored Participants. Based on these experiences, the Exchange no longer views the proposed rule text as superfluous, but, rather, such proposed rule text outlines a reasonable set of standards for a sponsored access relationship between the Exchange, the Sponsoring Member, and the Sponsored Participant. The Exchange believes that the proposed changes will enhance its rules and, as discussed above, harmonize the Exchange's rules with those of BATS and BYX. The Exchange does note that the proposal is not intended to supersede or supplement the Market Access Rule in any way, but rather to establish a more thorough set of rules under which the Exchange, Sponsored Participants, and Sponsoring Members will interact. As such, the Exchange also notes that compliance with the proposed rules has no bearing on whether any particular Member, Sponsoring Member, or Sponsored Participant is in compliance with the Market Access Rule.

#### Implementation Date

The Exchange intends to implement the proposed rule change on or about January 12, 2015. The Exchange will announce the implementation of the proposed rule change via a trading notice to be posted on the Exchange's website.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>19</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in that it is designed promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

free and open market and a national market system, and, in general, protect investors and the public interest. The proposal would effectively allow a Sponsoring Member(s) to provide a Sponsored Participant(s) with access to the Exchange and the ability to interact directly with Exchange employees. More specifically, the Exchange believes that the proposal is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general protect investors and the public interest because it would allow the Exchange to directly recognize the trading activity of Sponsored Participants and to communicate directly with Sponsored Participants regarding any potential issues that may arise.

The Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The proposed rule change is identical to the existing rules of BATS and BYX.<sup>21</sup> The proposed rule change is intended to align the Exchange's requirements for Sponsoring Members to provide sponsored access to Sponsored Participants with that of BATS, BYX, and EDGX<sup>22</sup> in order to provide consistent rules across the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on the other BGM Affiliated Exchanges. The proposed rule change would provide greater harmonization between the rules of the BGM Affiliated Exchanges of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the

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<sup>21</sup> See supra note 5.

<sup>22</sup> See supra note 9.



mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change would not impose any burden on competition. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Sponsoring Members and Sponsored Participants would be subject to the same requirements for sponsored access. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among the Exchange, EDGX, BATS and BYX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>23</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>24</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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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.

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 C.F.R. 240.19b-4.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-EDGA-2014-32 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGA-2014-32. 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 am and 3:00 pm. Copies of such filing will also 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 No. SR-EDGA-2014-32 and should be submitted on or before [21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).