

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76093; File No. SR-EDGA-2015-38)

October 7, 2015

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 3.13 (Payments Involving Publications that Influence the Market Price of a Security)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 23, 2015, EDGA Exchange, Inc. (“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 substantially 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 EDGA Rule 3.13 to update references to recently amended FINRA rules and make a ministerial, non-substantive change. 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.

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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).

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 Rule 3.13 to update references to a recently amended FINRA rule and make a ministerial, non-substantive change. Rule 3.13(a) prohibits Exchange members from “directly or indirectly, giv[ing], permit[ting] to be given, or offer[ing] to give anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any electronic or other public media, including any investment service or similar publication, Web site, newspaper, magazine or other periodical, radio, or television program of any matter that has, or is intended to have, an effect upon the market price of any security.” The Exchange proposes to amend paragraph (a) by replacing the term “Web site” with “website”.

Rule 3.13(b) sets forth exceptions to the prohibitions under paragraph (a) set forth above. These exceptions allow for compensation paid to a person in connection with the publication or circulation of: (i) a communication that is clearly distinguishable as paid advertising; (ii) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act of 1933; or (iii) a research report, as that term is defined in NASD Rule 2711. Rule 3.13 also states that FINRA is in the process of consolidating certain

NASD rules into a new FINRA rulebook. This provision also states that “[i]f the provisions of NASD Rule 2711 are transferred into the FINRA rulebook, then Rule 2711 shall be construed to require Exchange members to comply with FINRA rule corresponding to NASD Rule 2711 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.”

The Commission recently approved a proposed rule change by FINRA to transfer NASD Rule 2711 to the FINRA rulebook and redesignate it as FINRA Rule 2241.<sup>5</sup> This was proposed as part of FINRA’s process of consolidating certain NASD rules into the new FINRA rulebook. To reflect the approval of this recent FINRA proposed rule change, the Exchange proposes to replace the reference to NASD Rule 2711 with FINRA 2241 under paragraph (b)(3). The Exchange also proposes to delete the provision within Rule 3.13 referencing the transferring of NASD Rule 2711 to the FINRA rulebook as NASD Rule 2711 was transferred to the FINRA rule book as Rule 2241 (described above), as no longer necessary.

## 2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange does not propose to amend the prohibition or exceptions of any of its Rule 3.13. The Exchange believes that by updating cross references to

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<sup>5</sup> See Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (SR-FINRA-2014-047).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

FINRA rules as a result of the transfer of NASD Rule 2711 to the FINRA rulebook as FINRA Rule 2241 and making a ministerial, non-substantive change the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by avoiding potential investor and member confusion. The Exchange believes that these clarifying changes also would, in general, protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not propose to amend the prohibition or exceptions of any of its Rule 3.13. The proposed rule change is not designed to address any competitive issues but rather update Rule 3.13 to reflect the recent amendment to a referenced FINRA rule and make a ministerial, non-substantive change.

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 proposal.

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>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</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 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, the proposed rule change has become effective pursuant to

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 C.F.R. 240.19b-4.

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend the rule change if it appears to the Commission that this action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>10</sup> 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 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-2015-38 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 No. SR-EDGA-2015-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>9</sup> Rule 19b-4(f)(6) also requires that the Exchange give 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 satisfied this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

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 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-2015-38 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>11</sup>

Robert W. Errett  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).