

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65328; File No. SR-EDGA-2011-30)

September 13, 2011

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA By-Laws

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 2, 2011, 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 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the EDGA By-Laws to: (i) incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange’s ability to retain a third party to perform all or a portion of its audit function. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s 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

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

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

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 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 purpose of this filing is to make improvements to the Exchange's governance, and make certain clarifying amendments to its By-Laws. Specifically, the Exchange proposes to: (i) incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function.

First, EDGA proposes certain amendments to its By-Laws to improve its governance. Article VI, Section 2 of the By-Laws currently provides, in pertinent part, that the Nominating Committee shall nominate candidates for election to the Board and all other vacant or new Director positions on the Board. The Board met and approved the assignment of additional responsibilities for the Nominating Committee. Specifically, the Committee shall nominate chairpersons to serve on committees of the Board; oversee the implementation and effectiveness of the By-Laws, committee charters and other governance documents as needed; review and make recommendations regarding best practices in corporate governance; and oversee an annual self-evaluation of the independent Directors and each Board committee.

The Exchange believes that combining nominating and governance functions in a single committee will help ensure a careful consideration of nominees through a structured process. Although distinct, nominating and governance are related functions. The combined functions will allow the Nominating and Governance Committee to play a critical role in overseeing matters of corporate governance for the Board, including formulating and recommending governance principles. The Exchange believes that consolidating these functions in a single committee will improve the input of the committee in the overall committee process by taking advantage of overlaps in issues emanating from each function.

Combining governance responsibilities will not impair the committee's functioning. The overlap in responsibilities should improve efficiency as well as coordination within the Exchange, as the same group of committee members will oversee the entire nominating and governance function. Through these new functions, the Nominating and Governance Committee will have a greater role in overseeing Exchange governance. As a result, the Committee will be better positioned to provide future governance advice, while gaining a better understanding of the skills and attributes necessary for a candidate for Board membership or committee chairpersonship. By enhancing the quality of nominees to the Board, and ensuring the integrity of the nomination process, the Exchange believes that these additional functions will considerably improve its governance to the benefit of the Exchange and its stockholders.

The Exchange believes that combining nominating and governance functions within one committee is consistent with prior precedent, in that the Chicago Board Options Exchange, C2 Options Exchange, Inc., NYSE Euronext, and the NASDAQ OMX Group, Inc. currently have a

Nominating and Governance Committee<sup>3</sup> performing functions similar to those proposed in this filing.<sup>4</sup>

Second, EDGA By-Laws currently provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the “Nominating and Governance Committee.” The Exchange proposes to amend the By-Laws to change all references to the “Nominating Committee” to state “Nominating and Governance Committee.”

Third, the Exchange added the phrase “Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function” to Article V, Section 5(b) of its By-Laws. Under the current powers and responsibilities listed in that section of the By-Laws, the Audit Committee shall direct and oversee all the activities of the Company’s internal audit function, including management’s responsiveness to internal audit recommendations. Specifically, the Board seeks to clarify that references to the internal audit function relate to internal controls, and do not necessarily require internal auditors to perform the internal audit function. Accordingly, this amendment does not change the Audit Committee’s current responsibilities, but is intended to clarify the Exchange’s

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<sup>3</sup> See Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.; Article IV, Section 4.4 of the By-Laws of NYSE Euronext; Article IV, Section 4.13(h) of the By-Laws of the NASDAQ OMX Group, Inc.

<sup>4</sup> See Nominating and Governance Committee Charter, Chicago Board of Options Exchange (adopted May 17, 2011); Nominating & Corporate Governance Committee Charter, NASDAQ OMX Group, Inc. (approved July 26, 2010); Nominating and Governance Committee Charter, NYSE Euronext (adopted Dec. 12, 2007). Although not named the Nominating and Governance Committee, the International Securities Exchange’s Corporate Governance Committee also performs nominating and governance functions similar to those proposed by EDGA. See Charter of the Corporate Governance Committee of International Securities Exchange, LLC.

current ability to retain a third party auditor through codification in the By-Laws. The Exchange notes that it shall supervise and retain primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange's audit function.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>5</sup> which requires the rules of an exchange 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.

Specifically, the proposed additions will improve EDGA's governance structure by taking advantage of overlaps in nominating and governance functions. The additions promote consistency and efficiency in governance by consolidating these functions in one committee. Through the implementation of sound governance policies and practices, the Nominating Committee can better enhance the quality of Board nominees and ensure the integrity of the nomination process. This furthers EDGA's ability to be organized in a manner to have the capacity to carry out the purposes of the Act consistent with Section 6(b)(1) of the Act<sup>6</sup> and to carry out the purposes of Section 6(b)(5) of the Act.<sup>7</sup>

The changes will ensure that the committee's title accurately reflects the Nominating Committee's new governance functions as adopted by the Board. Codifying the Audit Committee's ability to retain third party auditors reflects the Board's determination that outsourcing the internal audit function to a third-party auditor can benefit the Exchange by

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

<sup>6</sup> 15 U.S.C. 78f(b)(1).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

providing another mechanism to detect and prevent fraudulent and manipulative acts and practices. Accordingly, the Exchange believes that the amendments are consistent with investor protection and the public interest.

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

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

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

Because the foregoing 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, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. EDGA has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),<sup>11</sup> the Commission may 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 30-day operative delay so that the proposal may become operative immediately upon filing. Because the proposed rule change is designed to codify and/or enhance certain of the Exchange's governance provisions, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>12</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-2011-30 on the subject line.

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<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGA-2011-30. 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 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-2011-30 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>13</sup>

Elizabeth M. Murphy  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).