

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68783; File No. SR-EDGA-2013-02)

January 31, 2013

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to EDGA Rule 13.9

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 22, 2013 the 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, 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 a rule change to amend Rule 13.9 to allow Members the option to opt-out their routed orders from inclusion in the Edge Routed Liquidity ReportSM on a market participant identifier(s) ("MPID(s)") basis. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet website at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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, Proposed Rule Change

1. Purpose

In SR-EDGA-2012-38 (the “Filing”),³ the Exchange introduced a new market data product, Edge Routed Liquidity Report (“Edge Routed Liquidity Report” or the “Service”) to Members⁴ and non-Members of the Exchange (collectively referred to as “Subscribers”). The Edge Routed Liquidity Report is a data feed that contains all historical order information for orders routed to away destinations by the Exchange. The Filing stated that Edge Routed Liquidity Report is offered as either a standard report (the “Standard Report”) or a premium report (the “Premium Report”) (the Standard Report and the Premium Report shall be collectively referred to as the “Reports”). In SR-EDGA-2012-42,⁵ the Exchange amended Rule 13.9 to provide additional information regarding the features of the Standard Report and the Premium Report.

The Exchange proposes to amend Rule 13.9 to state that Members will have the ability to request, on a MPID basis, and in a form prescribed by the Exchange, that their routed orders will not be included in the Edge Routed Liquidity Report.

³ Securities Exchange Act Release No. 67765 (August 31, 2012), 77 FR 55248 (September 7, 2012) (SR-EDGA-2012-38).

⁴ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

⁵ See Securities Exchange Act Release No. 67909 (September 21, 2012), 77 FR 59441 (September 27, 2012) (SR-EDGA-2012-42).

If a Member wishes to opt-out their routed orders from inclusion in the Service, such Member must submit a request to the Exchange in a form prescribed by the Exchange. Such request will prevent the display of the Member's routed orders in the Service effective as of the day the request was submitted. Members can notify the Exchange via email if they wish to revoke their election. Such request will be effective as of the day the request was submitted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and with Section 6(b)(5) of the Act⁷ in particular, which requires, among other things, that the Exchange's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Exchange believes that the proposed amendment is consistent with those principles as Members' election to be included or excluded in the Service is completely voluntary at any time. Providing Members the ability to opt-out their routed orders from inclusion in the Service makes available an additional choice that previously did not exist. Members that do not wish to represent their orders in the Service for any reason will be allowed to opt-out their routed orders

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

(on an MPID basis) from being included in the Service and any Member may cancel their subscription to the Service at any time.

The Exchange also believes that the proposed amendment is consistent with the principles of Section 6(b)(5) of the Act because allowing Members the ability to opt-out their routed order data from inclusion in the Service does not implicate any concerns related to manipulation or fraud. Because all data in the Service is displayed on an anonymous basis, Subscribers will be unaware of which Members have chosen to opt-out their routed order data from the Service.

Lastly, the proposal is nondiscriminatory because it applies uniformly to all Members. The Exchange believes that it is important to make this feature transparent to Subscribers of the Service by proposing to codify this principle in Rule 13.9.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As the Service is similar to those historical data products already provided by other exchanges, the Exchange believes the Service increases competition in the market for historical data products.⁸

⁸ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE; see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

In addition, the Exchange believes that the ability of Members to exclude their routed orders from the Service will help to maintain the competitiveness of the Service. This is because the Exchange believes that this additional feature will attract greater order flow to the Exchange as certain Members that do not wish their routed order information from being provisioned within the Service will simply exclude their routed orders from the Service as opposed to taking that additional order flow to other competing exchanges. Accordingly, allowing Members the option to exclude their routed order flow from the Service enables the Exchange to remain competitive with other exchanges.

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 its 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: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this 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 Section 19(b)(3)(A)⁹ of the Act and Rule 19b-4(f)(6) thereunder.¹⁰

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² 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 requested that the Commission waive the 30-day operative delay. The Exchange notes that waiver of the 30-day operative delay will allow Members who wish to opt-out their routed orders from inclusion in the Service to do so immediately without further delay. The Exchange notes that, without the ability to opt-out their routed orders from inclusion in the Service, Members may elect to redirect their routed order flow to the Exchange's competitors. Accordingly, the Exchange believes that this additional feature should not be delayed as it will allow the Exchange to remain competitive with other market centers. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow Members who wish to maintain order flow to the Exchange but who do not want their routed orders included in the Service to opt-out immediately. For this reason, the Commission designates the proposed rule change to be operative upon the operative date of the Filing.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

¹¹ 17 CFR 240.19b-4(f)(6)(iii). 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. The Exchange has satisfied this requirement.

¹² Id.

¹³ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-EDGA-2013-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-EDGA-2013-02. 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 EDGA. 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-2013-02 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).