

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67942; File No. SR-EDGX-2012-43)

September 27, 2012

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to Rule 2.11

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 25, 2012, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “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

EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend Rule 2.11(a)(7) to describe the circumstances under which the Exchange’s routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route (“DE Route”),<sup>4</sup> would be authorized to liquidate an error position resulting from one or more erroneous executions on the Exchange attributable to a systems, technical or operational issue (referred to herein as a “Systems Issue”) experienced by the Exchange. The text of the proposed rule change is available on the Exchange’s website

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> DE Route is a facility of the Exchange. Accordingly, under Exchange Rule 2.11(a)(1), the Exchange is responsible for filing with the Securities and Exchange Commission (the “Commission”) rule changes and fees relating to DE Route’s outbound router function, and its authorized functions are limited to those enumerated in Rule 2.11(a)(4).

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 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

Background

DE Route is the approved Outbound Router<sup>5</sup> of EDGX, subject to the conditions contained in Rule 2.11. EDGX relies on DE Route to provide outbound routing services from EDGX to external market centers (each, a "Trading Center"<sup>6</sup>). The Exchange has also been approved to receive inbound routes of equities orders by DE Route from EDGA Exchange, Inc. for a pilot period ending on June 30, 2013.<sup>7</sup>

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<sup>5</sup> As defined in EDGX Rule 2.11(a). See also, Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (order approving the registration of EDGX as a national securities exchange).

<sup>6</sup> As defined in EDGX Rule 2.11(a) and Rule 600(b)(78) of Regulation NMS under the Securities Exchange Act of 1934 (the "Act"), 17 CFR 242.600(b)(78).

<sup>7</sup> See Securities Exchange Act Release No. 66644 (March 22, 2012), 77 FR 18877 (March 28, 2012) (SR-EDGX-2012-09) (extending the pilot period of the Inbound Router as described in EDGX Rule 2.12(b) through June 30, 2013). See also Securities Exchange Act Release No. 64361 (April 28, 2011), 76 FR 25388 (May 4, 2011) (SR-EDGX-2011-12) (extending the pilot period through June 30, 2012).

In addition to the foregoing, DE Route, as well as the Exchange, is authorized under Rule 2.11(a)(6) to cancel orders when a Systems Issue occurs, and is authorized under Rule 2.11(a)(7), in connection with its role as an Outbound Router of EDGX, to maintain an error account for the purpose of liquidating an error position acquired as a result of a Systems Issue experienced either by DE Route, the Exchange or a Trading Center to which DE Route directed an outbound order.<sup>8</sup> In this regard, DE Route may only assume such a position in the error account under documented circumstances when such position could not fairly and practicably be assigned to one or more Members in its entirety.<sup>9</sup>

Proposed Amendment to Exchange Rule 2.11(a)(7)

The Exchange is now proposing to amend Rule 2.11(a)(7) to describe the circumstances under which DE Route would be authorized to use the error account to liquidate an error position resulting from an erroneous execution on the Exchange that was attributable to a Systems Issue, and not just an error position acquired in connection with its role as Outbound Router. In this regard, the proposed rule change would specify that an error position would not include any position that resulted from an order submitted by a Member to EDGX that was executed on EDGX and automatically processed for clearance and settlement on a locked-in basis. DE Route would not be permitted to: (i) accept a position in the error account from a Member's account; or (ii) permit any Member to transfer any position from the Member's account to the error

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<sup>8</sup> See Securities Exchange Act Release No. 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR-EDGX-2012-08) (order approving amendments to Rule 2.11 that establish the Exchange's and DE Route's authority to cancel orders and describe the operation of an error account).

<sup>9</sup> See EDGX Rule 2.11(a)(7). See also, supra note 8 for a description of the requirements applicable to DE Route relating, among other things, to: (i) determining whether an error position can be fairly and practicably assigned to one or more Members in its entirety; and (ii) the manner in which an error position acquired in the error account shall be liquidated.

account. In other words, DE Route would not be permitted to accept from a Member a position that was delivered to the Member through the clearance and settlement process, even if such position may have been related to a Systems Issue on EDGX. If a Member received a locked-in position in connection with a Systems Issue and experienced a loss in unwinding such position, that Member would be able to seek reimbursement from the Exchange in accordance with, and subject to the limitations of, Exchange Rule 11.12(d), which provides Members with the ability to file claims against the Exchange “for losses resulting directly from the malfunction of the Exchange’s physical equipment, devices and/or programming or the negligent acts or omissions of its employees.” If, however, a Systems Issue resulted in the Exchange not having valid clearing instructions for a Member to a trade, DE Route would be permitted to assume that Member’s side of the trade so that the trade could be automatically processed for clearance and settlement on a locked-in basis.

In the addition to the foregoing, the Exchange proposes to amend Rule 2.11(a)(7) to clarify that either the Exchange or DE Route, or both, are authorized to make a determination as to whether an error position can be fairly and practicably assigned to one or more Members, or alternatively, to make a determination as to whether an error position shall be acquired in DE Route’s error account to be liquidated, in either case in accordance with the provisions of Rule 2.11(a)(7).

#### Circumstances That Could Lead to an Error Position

An error position may result from a Systems Issue at the Exchange that does not involve routing of orders through DE Route. For example, a situation may arise in which a posted quote/order validly cancelled by the System<sup>10</sup> erroneously matched that quote/order with an

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<sup>10</sup> As defined in EDGX Rule 1.5(cc).

order that was seeking to access it. In such a situation, DE Route would have to assume that side of the trade opposite the order seeking to access the cancelled quote/order. DE Route would post the position in its error account and resolve the position in the manner described in Rule 2.11(a)(7).

An error position may also result from a Systems Issue whereby the Exchange does not receive sufficient notice that a Member that has executed trades on the Exchange has lost the ability to clear trades through The Depository Trust Clearing Corporation. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, DE Route would assume that Member's side of the trade so that the counterparty could settle the trade. DE Route would post such an error position into its error account and resolve the position in the manner described in Rule 2.11(a)(7).

The Exchange notes that this discussion of potential scenarios that could lead to an error position is for illustrative purposes only and is not intended to be an exhaustive list of all scenarios.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in that it is 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 mechanisms of a free and open

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

market and a national market system, and, in general, to protect investors and the public interest. Moreover, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Similar to the Exchange's previous proposal to authorize DE Route to maintain an error account for the purpose of addressing and resolving an error position acquired in connection with its role as an Outbound Router,<sup>13</sup> the Exchange continues to believe that allowing DE Route to assume an error position in the error account, and to liquidate such position in accordance with the conditions set forth in Rule 2.11(a)(7), is the least disruptive means to resolve an error position, except where it is fair and practicable for DE Route to assign the entire amount of such error position to one or more Members of the Exchange; ensures full trade certainty for market participants; and avoids disrupting the clearance and settlement process. The proposed amendment to Rule 2.11(a)(7) would extend these principles to circumstances where an error position resulted from one or more erroneous executions on the Exchange due to a Systems Issue experienced by the Exchange, and not solely under circumstances where DE Route was acting as the Exchange's Outbound Router. Thus, regardless whether the error position resulted from an execution on the Exchange or at a Trading Center,<sup>14</sup> Rule 2.11(a)(7) would continue to provide a consistent methodology for handling such error position in a manner that did not discriminate among Members, and would continue to require DE Route to establish controls reasonably designed to restrict the flow of any confidential information associated with the liquidation of an error position.

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<sup>13</sup> See supra note 8, at 11 [sic].

<sup>14</sup> As defined in EDGX Rule 2.11(a).

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</sup> thereunder.

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

<sup>16</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. The Exchange has satisfied this requirement.

#### 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-EDGX-2012-43 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 20549-1090.

All submissions should refer to File Number SR-EDGX-2012-43. 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 the 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-EDGX-2012-43 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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