

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72292; File No. SR-EDGX-2014-13)

June 2, 2014

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed

I. Introduction

On April 17, 2014, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to permit EDGX Members<sup>3</sup> to identify their retail orders as "retail" on the EDGX Book Feed (the "Proposal"). The Proposal was published for comment in the Federal Register on April 30, 2014.<sup>4</sup> The Commission received no comments on the Proposal. This order approves the Proposal.

II. Description of the Proposal

Currently, EDGX Members may submit their Orders as Non-Attributable Orders<sup>5</sup> or Attributable Orders.<sup>6</sup> If a Member chooses to submit an order as Attributable, the

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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> A Member is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See EDGX Rule 1.5(n).

<sup>4</sup> See Securities Exchange Act Release No. 72016 (April 24, 2014), 79 FR 24463 ("Notice").

<sup>5</sup> A Non-Attributable Order is defined as "[a]n order that is designated for display (price and size) on an anonymous basis by the Exchange. See EDGX Rule 11.5(c)(19).

<sup>6</sup> An Attributable Order is defined as, "[a]n order that is designated for display (price and size) including the Member's market participant identifier ('MPID')."

Exchange includes the Member's market participant identifier ("MPID") with that Member's published quotations on the EDGX Book Feed.

In the Proposal, the Exchange proposes to amend Footnote 4 of its Fee Schedule to permit Members to designate that their Attributable Retail Orders be identified as "Retail"<sup>7</sup> on the EDGX Book Feed, rather than by their MPID.<sup>8</sup> Under the Proposal, a Member may elect that their Retail Orders be identified as Retail on an order-by-order basis or instruct the Exchange to identify all of the Member's Retail Orders as Retail on a port-by-port basis where that port is also designated as a Retail Order Port.<sup>9</sup> The

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See EDGX Rule 11.5(c)(18).

<sup>7</sup> Footnote 4 of the Exchange's Fee Schedule defines a "Retail Order" as (i) an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. Footnote 4 of the Exchange's Fee Schedule also provides that Members may designate orders as Retail Orders on an order-by-order basis or a port level basis by designating particular FIX ports as Retail Order Ports. Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a "Retail Order" comply with the above requirements. See Footnote 4 of the Exchange's Fee Schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>.

<sup>8</sup> If a Member instructs the Exchange to identify all its orders on a Retail Order Port as Retail, the Member will not be able to designate any Retail Order from that port instead as an Attributable Order or as a Non-Attributable Order. See Notice, 79 FR at 24464.

<sup>9</sup> A Member's decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member's eligibility to qualify for a rebate under the Retail Order Tier included in Footnote 4 of the Exchange's Fee Schedule. See Notice, 79 FR at 24464.

Exchange will announce the effective date of the Proposal in a Trading Notice to be published no later than 30 days following approval of the Proposal by the Commission.<sup>10</sup>

### III. Discussion

After careful review, the Commission finds that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange 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 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; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that the Proposal is consistent with the Act because it is reasonably designed to promote market transparency and to encourage increased liquidity. Specifically, the Commission notes that, according to the Exchange, members who may otherwise choose to designate their order as Non-Attributable, and thereby not include their MPID with their published quote on the EDGX Book Feed, would choose to

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<sup>10</sup> See Notice, 79 FR at 24464.

<sup>11</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

designate their orders as Retail. Identifying additional orders as Retail Orders may encourage Members who wish to execute against Retail Orders to send additional Orders to the Exchange,<sup>13</sup> thereby potentially increasing the level of competition around retail executions, resulting in better prices for retail investors.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-EDGX-2014-13), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> The Exchange notes that it conducted a study of its execution data from January 1, 2014 to March 31, 2014, which indicated that Members who represent Retail Orders and utilize Attributable Orders to include their MPID with their published quote on the EDGX Book Feed received an 18% higher execution rate than Members who represent Retail Orders that elected not to include their MPID on the EDGX Book Feed via the use of a Non-Attributable Order. See Notice, 79 FR at 24464.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).