Janet McGinness
EVP & Corporate Secretary
General Counsel, NYSE Markets

NYSE EURONEXT

VIA EMAIL AND FEDERAL EXPRESS

September 11, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Release No. 34-67598; File Number SR-EDGX-2012-33—Notice of Filing of Proposed Rule Change to Amend EDGX Rule 11.5(c) to add the Edge Market Close℠ Order

Dear Ms. Murphy:

NYSE Euronext, on behalf of the New York Stock Exchange LLC ("**NYSE**"), appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "**Commission**") on the above referenced proposed rule change (the "**Proposed Rule Change**") by EDGX Exchange, Inc. ("**EDGX**"). The Proposed Rule Change would adopt new subparagraph (15) to EDGX Rule 11.5(c), which would allow for a new order type called an "Edge Market Close℠" order ("**EMC Order**"). An EMC Order would allow EDGX to accept orders to buy and sell securities, and hold those orders for later execution at a price determined solely by reference to the closing price determined through the closing procedures held by another exchange—either the NYSE or the NASDAQ Stock Market LLC ("**NASDAQ**"), depending on where the security is listed (the "**Listing Market**").

NYSE Euronext respectfully submits that the Commission should disapprove the Proposed Rule Change because it is not in the public interest and is inconsistent with the Securities and Exchange Act of 1934 (the "**Exchange Act**") and the Commission's rules thereunder, for the following reasons: (i) the proposed EMC Order type is not an appropriate function of a registered national securities exchange, (ii) proposed EMC Orders would be disruptive to trading and inhibit transparency and price discovery, and (iii) the Proposed Rule Change would not increase fair competition among exchanges.

I. Proposed EMC Orders Are Not Appropriate for an Exchange

A registered national securities exchange serves a fundamental role in the national market system by providing a trading environment where market participants' orders can interact in a transparent manner. Through this matching of the best available orders, exchanges determine *at what price* those orders may be executed—rather than simply executing transactions based on external reference prices. In this regard, exchanges contribute to public price discovery and benefit the market as a whole.

EDGX's proposal to execute EMC Orders would denigrate the role of an exchange. Rather than fostering order interaction and efficient price discovery, EDGX would simply collect EMC Orders and hold them until the end of the trading day. Shortly before closing, EDGX would pair off all offsetting EMC Orders and route any imbalance to the Listing Market. Those EMC Orders that offset one another would be executed after the market close, not through the interaction of those orders, but solely based on the closing price determined at the Listing Market.

In contrast to how orders are traditionally handled, on an exchange, the proposed process for execution of EMC Orders more closely resembles a broker-dealer internalizing trades at prices set by reference to the national best bid or best offer price available at a third-party market. EMC Orders would effectively be a form of off-exchange trading being processed by an exchange. The Commission is already questioning whether and how internalization and other types of off-exchange trading impact market quality and price discovery when the trades actually occur off-exchange.[1] It is certainly inappropriate for this type of activity to actually be facilitated by an exchange.

NYSE Euronext believes that there may be a role for this type of "execution by reference price" by broker-dealers, but the activity is antithetical to the concept of a national securities exchange, which should participate in discovering prices for the public—not simply "free ride" on the price discovery performed on other exchanges.

II. EMC Orders Would Harm Investors by Reducing Transparency and Impeding Price Discovery

The closing price of each security is an important benchmark price widely used by institutions, mutual funds and indices to reflect the market value of that security at the market close. Because of the importance of this price, it must be accurate and the process through which it is reached must be robust and transparent. The Proposed Rule Change would introduce uncertainties and opaqueness into the process, resulting in less reliable and less accurate closing prices.

The proposed EMC Order would siphon away a percentage of orders that would otherwise contribute to price discovery as part of the relevant Listing Market's closing process. Under the Proposed Rule Change, an equal number of EMC Orders to buy and EMC orders to sell would be withheld by EDGX, with only the imbalance of orders on one side of the market being routed to the Listing Market as market-on-close orders.[2] Even though the withheld orders offset one another, the effect would be to

---

1 *See* generally *Concept Release on Equity Market Structure*, Exchange Act Release No. 61358 (Jan. 14, 2009).

2 EDGX would receive EMC Orders throughout the day and hold them, undisclosed and undisseminated, until after 3:40 p.m. (for NYSE-listed securities), at which point it will route the imbalance quantity to the NYSE as market at-the-close orders. Although EMC Orders may not constitute quotations or transactions, it nonetheless seems to be at odds with the transparency objectives of the Exchange Act for a registered national securities exchange to hold orders wholly in secret until the end of trading.

Additionally, the Proposed Rule Change would result in a large number of orders being held and aggregated by EDGX until it routes a burst of orders reflecting the unbalanced side of the EMC Orders in each security to the Listing Market at a single point in time (either 3:40 p.m. or 3:45 p.m., depending on the Listing Market). In contrast, currently each Listing Market receives these orders throughout the day, rather than all at once. By concentrating the all order routing into a single moment in time, during a sensitive period of the day that already experiences relatively higher volumes, the Proposed Rule Change may unnecessarily stress and increase risk to the market infrastructure.

deny the public valuable market information that currently contributes to the public price discovery process.

It may be helpful to review how a Listing Market's closing process works in order to appreciate the impact of the Proposed Rule Change on the functioning of the market and price discovery. With respect to the NYSE, a detailed and systematic closing process is maintained that seeks to maximize the number of shares that trade at the best price, based on a hierarchy set out in its rules.[3] In relevant part, the NYSE closing process involves the collection of market at-the-close ("**MOC**") orders, limit "at-the-close" ("**LOC**") orders, and Closing Offset ("**CO**") orders. Except as noted below, MOC and LOC orders may only be entered until 3:45 p.m. CO orders may be entered until closing, but are contingent orders and are only executed as a last resort to offset any remaining imbalance after all other eligible orders have been executed. At 3:45 p.m., if there is a significant imbalance between buy and sell MOC and marketable LOC orders, the NYSE will (i) publish the size of the imbalance to the Consolidated Tape (called a "Mandatory MOC/LOC Imbalance Publication"), and (ii) allow additional MOC and LOC orders on the side of the market that would offset that significant imbalance.[4] Additionally, regardless of the size of the imbalance, beginning at 3:45 p.m., the NYSE disseminates "Order Imbalance Information" that includes *both* the size of any imbalance and the volume of shares of the relevant security that have been paired off.[5]

Because the volume of paired off shares entered as EMC Orders at EDGX will be withheld from public view until executed after closing, the volume of paired off shares that the NYSE disseminates in its Order Imbalance Information will be skewed. This will impact both trades entered as part of the NYSE's closing process as well as trading during the final 15 minutes of the session.

With regard to at-the-close trading, the NYSE understands that market participants consider both the size of any imbalance as well as the volume of paired off trades in determining whether, and at what price, to enter their own CO orders or MOC and LOC orders (when significant imbalances cause such orders to be allowed after 3:45 p.m.). This is because the size of any imbalance is much more relevant when considered in context of the full volume of already paired-off shares. For example, a 10,000 share imbalance with respect to a security's buy and sell interest in MOC and marketable LOC orders conveys unique information depending on whether there have been 20,000 shares otherwise paired off versus where there have been 1,000,000 shares otherwise paired off. Volume information regarding paired off shares is important for a market participant in evaluating the risk of a potential trade. For example, if the volume of paired off shares relative to the imbalance is low, there is a greater risk that additional orders or cancellations will impact the price.

Similarly, market participants engaged in a variety of trading strategies during the final 15 minutes of intra-day trading rely on accurate reporting of the volume of paired off shares provided by the NYSE Order Imbalance Information. For example, market participants may engage in trading strategies that consider their trading relative to a percentage of volume (POV) or volume weighted average pricing

---

3 A full description of the NYSE's closing process is contained in NYSE Rule 123C.

4 See NYSE Rule 123C(5).

5 See NYSE Rule 123C(6).

(VWAP). Likewise, where market participants expect there to be a particular level of at-the-close volume due to an index rebalancing, they consider the volume of already paired-off shares in order to estimate how much more activity to expect during the final minutes of trading. In order for these strategies to be effective, these market participants require information regarding the full volume of paired off trading that is included in the NYSE Order Imbalance Information.

If the Proposed Rule Change is adopted, some percentage of orders that would otherwise have been entered as MOC and marketable LOC orders would instead be entered as EMC Orders on EDGX, and be hidden from public consideration. The result would be the volume of shares paired off in EMC Orders would not be included in the NYSE's Order Imbalance Information and would be unavailable for public consideration. Market participants would be left with an incomplete and potentially misleading view of the market, deprived of vital information necessary for trading at-the-close and during the final minutes of trading.

A fundamental objective of the Exchange Act is to ensure transparency and the availability of information about transactions in securities.[6] The Proposed Rule Change is in direct conflict with this objective as it would allow EDGX to maintain hidden orders, and cause the public to be misled with respect to the volume of paired off shares, the market for securities, ultimately distorting trading and impeding price discovery.

III. EMC Orders Would Not Enhance Legitimate Competition

In its filing, EDGX justifies its Proposed Rule Change on the basis that it seeks to increase competition for orders seeking an execution at the closing price. Claiming that EMC Orders would compete with the Listing Market for executions at the closing price is disingenuous and misleading. In reality, EDGX's manner of competing is simply claiming the benefit of the closing price developed by the Listing Market, while incurring none of the burdens or costs of running the processes that develop it. Under EDGX's logic, a movie theater employee who sneaks patrons in without tickets is merely increasing the level of competition among providers seeking customers interested in viewing the film.

The NYSE strongly supports fair competition among exchanges, as envisioned by Congress for a national market system under Section 11A(a)(1)(C)(ii) of the Exchange Act. However, if EDGX were interested in actually promoting fair competition for at-the-close orders, EDGX should seek to conduct its own closing auctions, the way NASDAQ competes with the NYSE for at-the-close orders in NYSE-listed securities. Instead, EDGX seeks to *unfairly* compete by free riding on costs borne by the Listing Markets in running their closing processes. In doing so, EDGX promotes its own self interest at the expense of competition among orders and price discovery.

In fact, while EDGX points to the higher cost of closing price executions compared to intra-day execution fees as evidence of uncompetitive pricing, with respect to the NYSE, it is the higher costs involved in the unique process for closings compared to intra-day trading that contribute to the higher fees. For example, because of the importance of the closing price, the NYSE closing process is not entirely automated. The process continues to involve natural person representatives of Designated Market

---

6 *See* Exchange Act § 11A(a)(1)(C)(iii); Regulation NMS Adopting Release, Exchange Act Release No. 51808 (June 9, 2005) at 34.

Makers and Floor Brokers as safeguards to ensure stability and accuracy, and to ensure that erroneous orders are excluded. Intra-day trading does not typically require manual intervention, and such trades can be economically executed at lower fees. If the Proposed Rule Change is approved, however, and significant amount of MOC or LOC orders migrate to become EMC Orders, maintaining these safeguards may cease to be economical, harming the market as a whole rather than increasing fair competition. As such, EDGX fails to provide a legitimate purpose for the Proposed Rule Change or demonstrate that it would further the objectives of the Exchange Act.

* * * *

The Proposed Rule Change is incompatible with role of a national securities exchange, is inconsistent with and contrary to the transparency and price discovery objectives of the Exchange Act and the Commission's rules, would not increase fair competition and is not in the public interest. NYSE Euronext respectfully urges the Commission to disapprove the Proposed Rule Change.

Respectfully submitted,

Janet McGinness