

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63589; File No. SR-EDGX-2010-24)

December 21, 2010

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.5

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 13, 2010, EDGX Exchange, Inc. (the “Exchange” or the “EDGX”) 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 the Substance of the Proposed Rule Change

EDGX proposes to amend EDGX Rule 11.5(a)(2) to provide that the system functionality that cancels any portion of a market order submitted to the Exchange that would execute at a price that is more than \$0.50 or 5 percent worse than last sale at the time the order initially reaches the Exchange, whichever is greater, does not apply to Destination-on-Open orders, as defined in Rule 11.5(c)(10). The text of the proposed rule change is available on the Exchange’s Internet website at <http://www.directedge.com>, on the Commission’s website at <http://www.sec.gov>, and at the Commission’s Public Reference Room.

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

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

<sup>2</sup> 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, the Proposed Rule Change

1. Purpose

As provided in SR-EDGX-2010-14,<sup>3</sup> Exchange Rule 11.5(a)(2) protects market participants from executions at prices that are significantly worse than the last sale at the time of order entry by providing Exchange system functionality that cancels any portion of a market order (as defined in Rule 11.5(a)(2)) that would execute at a price that is 50 cents or 5 percentage points worse than the consolidated last sale, whichever is greater. Any portion of a market order that would otherwise execute outside of these thresholds is immediately cancelled back to the User.<sup>4</sup>

The Exchange proposes to modify Rule 11.5(a)(2) to provide that Destination-on-Open orders, as defined in Rule 11.5(c)(10)<sup>5</sup>, are not subject to these market collars.<sup>6</sup> The rationale for this exception is twofold. First, using a reference price calculation for market collar thresholds at the open of trading is problematic because of the potential lack of trading activity

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<sup>3</sup> See Securities Exchange Act Release No. 63163 (October 22, 2010), 75 FR 66408 (October 28, 2010) (SR-EDGX-2010-14).

<sup>4</sup> A User is defined in Exchange Rule 1.5(cc) as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3”.

<sup>5</sup> Rule 11.5(c)(10) defines a Destination-on-Open order, in part, as “a market or limit order that instructs the System to route the order to a specified away trading center to participate in said trading center’s opening process, without being processed by the System as described below in Rule 11.9(b)(1).”

<sup>6</sup> The Exchange notes that when orders are routed to an away trading center, such away trading centers’ collar rules apply, when applicable, regardless of the Exchange’s proposed exclusion for Destination-on-Open orders.

just prior to the open and the resulting price dislocation. Therefore, the reference price for a market collar on a Destination-on-Open order could be out of line with the market at the open of the regular trading session. In addition, other Exchanges also address this issue similarly by excluding market on open orders as well.<sup>7</sup>

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>8</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. The Exchange believes that excluding Destination-on-Open orders from the application of market collars is appropriate in order to avoid the potential dislocation between the reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session.

Accordingly, the modifications to Exchange Rule 11.5 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange will issue an information circular to all Members prior to implementation, which will be on or about December 14, 2010.

### 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.

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<sup>7</sup> See, e.g., Nasdaq Rule 4751(f)(13) which excludes market on open orders from the definition of "collared orders." See also Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR-Nasdaq-2009-070).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments Regarding 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: (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)<sup>9</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>13</sup> which would make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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 met this requirement.

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> Id.

operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> The Commission notes that the proposal is based on the rules of another SRO that similarly excludes market on open orders from its market collar functionality.<sup>15</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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 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-EDGX-2010-24 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-2010-24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>14</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).

<sup>15</sup> See supra note 7.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 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 publicly available. All

submissions should refer to File Number SR-EDGX-2010-24 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>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).