SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67598; File No. SR-EDGX-2012-33)

August 6, 2012

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend EDGX Rule 11.5(c) to add the Edge Market Close^{SM} Order

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 July 27, 2012, the 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

The Exchange proposes to amend Rule 11.5(c) to add a new order type, the Edge Market Close^{SM} ("EMC") Order, to the rule. The text of the proposed rule changes is available on the Exchange's 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. 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.

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 11.5(c) to add new subparagraph (15), which would describe a new order type, the EMC Order. An EMC Order would be defined as an order to buy or sell on the Exchange a security that is listed on the New York Stock Exchange LLC (the "NYSE") or The NASDAQ Stock Market LLC ("NASDAQ") (each, a "Listing Market") at the official closing price of such security published by the corresponding Listing Market.[3] Users[4] would be able to enter, cancel and cancel/replace EMC Orders from prior to the Pre-Opening Session[5] on trade date until five (5) minutes prior to the "cut-off time" for the entry of Market At-the-Close Orders on the NYSE and Market-on-Close Orders on NASDAQ (in each case, the "EMC Cut-Off Time").[6] All EMC Orders on the EDGX Book[7] at the EMC Cut-Off Time would be locked-in either for execution on the Exchange or for routing to the applicable Listing Market (to the extent not otherwise matched with a contra-side EMC Order), as described below. Users would not be able to cancel or cancel/replace any EMC Order after the EMC Cut-

3 In the event that a particular security were listed on both the NYSE and NASDAQ, the Exchange would select one of such exchanges for purposes of ascertaining the official closing price for the execution of EMC Orders in such security, based on the exchange with the greater market share in the security measured over the previous three (3) calendar months. The Exchange would disclose on its website such selection prospectively in advance of offering the EMC Order in such security.

4 As defined in EDGX Rule 1.5(ee).

5 As defined in EDGX Rule 1.5(s).

6 Currently, the NYSE designates the cut-off time for the entry of Market At-the-Close Orders as 3:45 p.m. Eastern Time (the "NYSE Cut-off Time"). See NYSE Rule 123C. NASDAQ in turn, designates the "end of the order entry period" as 3:50 p.m. (the "NASDAQ Cut-Off Time"). See NASDAQ Rule 4754. Thus, the EMC Cut-Off Times would be 3:40 p.m. for EMC Orders in NYSE-listed stocks, and 3:45 p.m. for EMC Orders in NASDAQ-listed stocks.

7 As defined in EDGX Rule 1.5(d).

Off Time, and the Exchange would reject back to the User any EMC Order received after the EMC Cut-Off Time. During the time between the EMC Cut-Off Time and the NYSE Cut-Off Time or the NASDAQ Cut-Off time, as the case may be, the Exchange would calculate, for each security for which EMC Orders were entered, the maximum number of shares underlying such EMC Orders that can be matched, or paired off. Priority on the EDGX Book for EMC Orders would be based strictly on time of entry. EMC Orders would be eligible for partial execution on the Exchange. The unmatched portion of any EMC Orders that could not be paired off on the Exchange pursuant to this process would then be routed as Market At-the-Close Orders to the closing process of the NYSE for NYSE-listed stocks, or as Market-on-Close Orders to the closing process of NASDAQ for NASDAQ-listed stocks. If there was no contra-side EMC Order on the Exchange to match against a particular EMC Order, then such EMC Order would be routed to the closing process of the applicable Listing Market as described above. The execution price of an EMC Order executed on the Exchange would be the official closing price[8] published by the NYSE for EMC Orders in NYSE-listed stocks, or by NASDAQ for EMC Orders in NASDAQ-listed stocks, and Users would be charged fees, if any, for such executions according to the Exchange's published fee schedule. The execution prices of the unmatched portion of any EMC Orders that were routed to the applicable Listing Market for execution in such Listing Market's closing auction would also be the official closing price published by such Listing Market, and the Exchange would pass through to the Member any fees charged by the Listing Market for the execution of orders in its respective closing process.

[8] For example, NYSE Rule 900(e) defines "closing price" as "the price established by the last 'regular way' sale in a security prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session, as determined by the Exchange." Further, while the term "NASDAQ Official Closing Price" is not specifically defined in NASDAQ's rules, it is referenced in NASDAQ IM-5505(b) and NASDAQ Rules 4753 (halt and imbalance crosses) and 4754 (closing cross).

The following examples illustrate how the EMC Order would work. In each case, assume that XYZ stock is listed on the NYSE; therefore, the EMC Cut-Off Time would be 3:40 p.m.

Example 1:

Member A enters an EMC Order to buy 500 shares of XYZ at 2:00 p.m. Member B enters an EMC Order to sell 300 shares of XYZ at 2:30 p.m. At or shortly after 3:40 p.m. but prior to the NYSE Cut-Off Time of 3:45 p.m., the Exchange would pair off Member B's EMC Order to sell 300 shares with 300 shares of Member A's EMC Order to buy 500 shares, leaving a remainder of 200 shares to buy. Before 3:45 p.m., the remaining 200 shares of Member A's order would be routed to the NYSE via EDGX's routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route, as a Market At-the-Close Order.

After 4:00 p.m., the Exchange would execute Member A's and Member B's EMC Orders, for 300 shares each, at the official closing price for XYZ published by the NYSE and report such execution to the responsible Securities Information Processor. The Exchange would also report back to Member A an execution at the official closing price of the remaining 200 shares in the NYSE's closing auction, and pass through to Member A the fees charged by the NYSE for executions of Market At-the-Close Orders in its closing auction.

Example 2:

Assume the same facts as above, except now Member C enters an EMC Order to buy 1000 shares of XYZ at 3:40:02 p.m. The Exchange would reject the order back to Member C because it would have been submitted after the EMC Cut-Off Time of 3:40 p.m.

Example 3:

Assume the same facts as above, except now Member D enters an EMC Order to buy 300 shares of XYZ at 3:15 p.m., and at 3:20 p.m. Member A cancels its EMC Order to buy 500 shares and replaces it with an EMC Order to buy 700 shares. Following the EMC Cut-Off Time at 3:40 p.m., the Exchange would pair off Member D's EMC Order to buy 300 shares with Member B's EMC Order to sell 300 shares, as Member A would have lost its time priority on the Book when it cancelled and replaced its original order with greater size. Member A's order would then be routed via DE Route to the NYSE as a Market At-the-Close Order in accordance with NYSE rules.

The Exchange is proposing the EMC Order in order to increase the level of competition for orders seeking execution at the official closing price.[9] No other national securities exchange has offered its members the ability to obtain a closing price execution away from the NYSE and NASDAQ; as a result, the Exchange believes that the fees that the NYSE and NASDAQ charge for executions of Market At-the-Close Orders and Market-on-Close Orders, respectively, are not being sufficiently challenged by competitive forces. While robust competition between and among national securities exchanges and alternative market centers for intraday equities order flow has resulted in a steady decrease in trading fees over the previous decade, the fees charged by the NYSE and NASDAQ for closing price executions have actually increased over the past six years.

9 If and to the extent that the Exchange charges any fees for the execution of EMC Orders, it will file such fees with the Commission and post them on its website prior to implementation of the EMC Order.

For example, from August 2006 through July 2009, excluding any tiered discounts offered by NASDAQ, NASDAQ charged $0.0005 per side for closing price executions,[10] which increased to $0.0007 per side in 2009[11] and to $0.0010 per side in 2010[12] – approximately doubling the rate in 3 years. Thus, currently the "cost of match"[13] for closing price executions on NASDAQ is approximately $0.0020, or "20 mils".[14] Similarly, excluding any tiered discounts offered by the NYSE, the NYSE increased its rate from $0.0005 per side to $0.0007 per side in August 2009,[15] then to $0.00085 per side from September 2010[16] to March 2012, when it was increased to $0.00095 per side,[17] nearly doubling its rates in approximately three

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10 See Securities Exchange Act Release No. 60323 (July 16, 2009), 74 FR 36543 (July 23, 2009) (SR-NASDAQ-2009-67) (citing to the proposition that NASDAQ did not modify its fee for MOC orders since it began to operate as a national securities exchange in 2006).

11 Id.

12 See Securities Exchange Act Release No. 62592 (July 29, 2010), 75 FR 47053 (August 4, 2010) (SR-NASDAQ-2010-95).

13 For purposes of this rule filing, the "cost of match" refers to the total or net cost of a single execution to both sides of the transaction. For closing price executions on NASDAQ and the NYSE, for example, it is currently measured by the explicit fee charged to both sides of the cross (although under certain narrow circumstances, on one or both sides, they are subject to reduction, as described infra at footnotes 14 and 18). For most exchanges, however, the "cost of match" for intraday matches or executions is generally calculated by netting rebate credits against take or removal fees.

14 The rate per share can be reduced to $0.0001 only in the case of internalized shares (meaning, those shares executed in the NASDAQ Closing Cross that execute against other "on close" orders submitted by the same Market Participant Identifier ("MPID")) of MPIDs that execute more than 100 million Market-on-Close or Limit-on-Close Orders in the NASDAQ Closing Cross per month, and that add liquidity meeting the thresholds equivalent to NASDAQ's $0.00295 pricing tier.

15 See Securities Exchange Act Release No. 60436 (August 5, 2009), 74 FR 40252 (August 11, 2009) (SR-NYSE-2009-77).

16 See Securities Exchange Act Release No. 62826 (September 1, 2010), 75 FR 54928 (September 9, 2010) (SR-NYSE-2010-63).

17 See Securities Exchange Act Release No. 66600 (March 20, 2012) [sic], 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07).

years. Thus, the cost of match for closing price executions on the NYSE is approximately $0.0019, or “19 mils”.[18]

Relative to intraday matches or executions the fees charged by the NYSE and NASDAQ for closing price executions are significantly more expensive. For example, large order flow providers that reach certain of NASDAQ’s top tiers have a typical cost of match that varies from $0.00005 to $0.0005 (or “1/2 a mil” to “5 mils”).[19] Moreover, a typical cost of match for market participants that are not Designated Market Makers (“DMMs”) or Supplemental Liquidity Providers (“SLPs”) on the NYSE is approximately $0.0008 (or “8 mils”).[20]

The Exchange has designed the EMC Order to provide an alternative means to obtain a closing price execution, without any impact on the price discovery function of the NYSE’s and NASDAQ’s respective closing processes. The existence of an alternative venue to obtain closing price executions introduces competition, and, consequently, a potential decrease in the fees charged to market participants for such executions.[21] Moreover, the EMC Order would not impact the price discovery function of the NYSE’s and NASDAQ’s respective closing processes by replicating only market-on-close type orders, as opposed to limit-on-close orders, and the

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[18] The rate per share can be reduced to $0.00055 for market participants whose average daily volume of “on close” orders is 14 million shares or more.

[19] For example, NASDAQ’s cost of match at two of its top tiers can be approximated by subtracting the rebate credit (0.00295 or 0.0025) from the take or removal fee (0.0030) to equal 0.00005 or 0.0005/share, respectively. See http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

[20] Non-DMM and non-SLP liquidity providers earn a rebate of 0.0015 per share. Non-floor based liquidity removers are charged 0.0023 per share. Thus, the approximate cost of match on the NYSE (for non-DMM and non-SLPs) is 0.0008 per share. See http://usequities.nyx.com/markets/nyse-equities/trading-fees.

[21] It is the Exchange’s intention, upon the Commission approval of the EMC Order, to offer executions of EMC Orders, to the extent matched on the Exchange, at zero cost for at least some period of time. It is further the Exchange’s intention that, if and when it determines to charge a fee for the execution on the Exchange of an EMC Order, such fee would be less than the fee charged by the applicable Listing Market.

Exchange would only execute those EMC Orders that naturally paired off and effectively cancelled each other out. Any unmatched EMC Orders would be routed to the applicable Listing Market for execution in that Listing Market's closing process.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[22] and furthers the objectives of Section 6(b)(5) of the Act,[23] 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 market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system, and foster cooperation and coordination with persons engaged in facilitating transactions in securities, by promoting competition among national securities exchanges in the execution of matching closing price orders without disrupting the price discovery process of NYSE's and NASDAQ's respective closing processes. The EMC Order would be neutral to price discovery, as it would only execute on the Exchange against a matching contra-side EMC Order. Any imbalance resulting from unmatched EMC Orders to the buy or sell side would be routed to the applicable Listing Market for execution in their respective closing processes. The proposed rule change would protect investors and the public interest by encouraging the NYSE and NASDAQ to compete for market orders in their closing processes.

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22 15 U.S.C. 78f(b).

23 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule changes will 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 neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-EDGX-2012-33 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-2012-33. 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-2012-33 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.[24]

Kevin M. O'Neill
Deputy Secretary

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[24] 17 CFR 200.30-3(a)(12).