

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69855; File No. SR-EDGX-2013-21)

June 25, 2013

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer and Establish Fees for a New Exchange Service, EdgeRisk Gateways

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 June 14, 2013, EDGX Exchange, Inc. (the “Exchange” or “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 Exchange has designated the proposed rule change as it pertains to the fees for EdgeRisk GatewaySM (the “Service”) as “establishing or charging a due, fee or other charge” under Section 19b(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission.

Additionally, the Exchange has designated the proposed rule change as it pertains to the EdgeRisk Gateway service as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to offer and establish fees for the Service, a risk management tool available to Members⁷ and non-Members⁸ of the Exchange. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange’s Internet 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Addition of EdgeRisk Gateway Service

The Exchange currently offers logical ports through which Members and non-Members enter orders in the Exchange’s System,⁹ receive drop copies of orders and execution messages, and receive transmission of depth of book data (“Logical Ports”). Each Logical Port is assigned an access gateway that performs order validations and manages the cycle of a submitted order’s

⁷ As defined in Exchange Rule 1.5(n).

⁸ Specifically, service bureaus that act as a conduit for orders entered by Members that are their customers.

⁹ As defined in Exchange Rule 1.5(cc).

flow of information to the System and back to the Member. The access gateway performs functions such as message validation, acknowledgement messaging, risk checks, matching engine routing and execution messaging. The Exchange currently assigns Members' and non-Members' Logical Ports to the access gateways through a standard method that accounts for the relative message traffic expected over the Logical Port as well as redundancy requirements, where an access gateway contains assigned Logical Ports for a number of firms. The Exchange assigns Member and non-Member sessions to multiple access gateways so that the failure of one gateway may not result in the loss of access. On an ongoing basis, the Exchange carefully monitors incoming and outgoing traffic on all access gateways to ensure that available capacity is adequate to support Exchange message traffic and installs additional access gateways as needed to ensure consistent capacity levels are maintained. Although the Exchange monitors traffic to ensure available capacity, it cannot completely address the effect of a trading disruption caused by any Member or Non-Member.

In order to assist Members' and non-Members' efforts to mitigate the impact of trading disruptions, the Exchange proposes to offer EdgeRisk Gateway as a new, optional fee-based service that provides Members and non-Members the option to obtain dedicated primary and backup access gateways in addition to, or in place of, a shared access gateway. Such Members and non-Members that choose to obtain the Service (each, a "Subscriber", and collectively "Subscribers") would benefit from enhanced risk mitigation, as it would reduce the impact of another firm's message peaks or programming mistakes on the Subscriber's trading experience. The Exchange notes that the Commission recently expressed concern regarding the potential

ripple effects caused by systems disruptions and message traffic-related issues in particular.¹⁰

The Service would mitigate risks associated with disruptions caused by excessive message traffic or programming mistakes because the Subscriber's order flow on its dedicated access gateways would be insulated from such external disruptions. Furthermore, by reducing the impact that could arise from another firm, the Service would provide improved performance, as the performance and capacity of the access gateways would be determined solely by the Subscriber's order behavior.¹¹

The Service would include dedicated access to both a primary and a backup access gateway to afford Subscribers access redundancy. Accordingly, the backup access gateway would function as a safety measure, allowing Subscribers to allocate their sessions across both access gateways, protecting Subscribers from a loss of access due to a server malfunction. Additionally, Subscribers may also request some of their Logical Ports continue to be assigned to shared access gateways for further risk mitigation.

The Exchange notes that both gateway options (shared and dedicated) would offer full backup to the extent that a Member or non-Member's sessions are spread across multiple

¹⁰ See, e.g., Securities Exchange Act Release No. 69077, 78 FR 18084, 18138 (March 25, 2013) (File No. S7-01-13) (proposing Regulation SCI). In particular, the Commission noted that systems disruptions "could result in confusion about whether orders are handled correctly or whether the systems issue . . . could have caused capacity issues elsewhere." Id. at 18138. The Commission went on to warn that, "if an e-market-maker handling 20 percent of message traffic experiences a systems issue, the order flow could be diverted elsewhere, including to entities that are unable to handle the increase in message traffic, resulting in a disruption to that entity's systems as well. Similarly, a broker-dealer accidentally could run a test during live trading and flood markets with message traffic such that those markets hit their capacity limits, resulting in a disruption." Id. at 18138, n. 336.

¹¹ The Exchange notes that the capacity of any system is finite and, as such, the risk associated with access gateway capacity cannot be eliminated entirely, as infrastructure components, the Subscriber's infrastructure, or the Subscriber's own trading patterns can affect the Subscriber's overall trading experience.

gateways. The Exchange further notes that it would, on an ongoing basis, continue to carefully monitor incoming and outgoing message traffic across all access gateways (shared and dedicated) so that available capacity is adequate to support Exchange message traffic. Additionally, the Exchange would continue to install additional shared access gateways as needed so that consistent capacity levels are maintained.

Both shared and dedicated gateway options consist of identical hardware and software with identical capacity and capabilities, offering equivalent latency under the same loads. To the extent that the load on a Subscriber's dedicated gateway is less than the load on a shared gateway, a Subscriber normally would expect reduced latencies in sending orders to the Exchange through its dedicated gateway. In this regard, the Service is similar to other types of services provided by self-regulatory organizations that offer higher levels of service for a higher fee.¹² Other than the possible reduced latencies due to reduced gateway load, the Exchange believes that there are no material differences in terms of access to the Exchange between Subscribers and Members and non-Members that choose not to subscribe to the Service.

¹² For example, many exchanges allow their member and non-member organizations the option to pay a higher price in exchange for a more stable and/or efficient connection, such as that obtained through co-location services or payment for logical ports. See, e.g., Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (approving fees charged by NYSE for its co-location services); Securities Exchange Act Release No. 62397 (June 28, 2010) 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019) (approving fees charged by NASDAQ for its co-location services); see also NASDAQ Stock Market LLC, Price List – Trading Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2> (listing fees for use of logical ports); BATS Exchange, Inc. & BATS Y-Exchange, Inc., Exchange Fee Schedule, http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf (listing fees for logical ports); EDGA Exchange, Inc., EDGA Exchange Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx> (listing fees for logical ports).

Proposed Fees Applicable to the Service

The Exchange proposes to offer the Service to Members and non-Members for a monthly charge of \$5,000. The Exchange is offering this new pricing model in order to keep pace with changes in the industry and evolving Member needs as new technologies emerge and products continue to develop and change. As previously noted, purchase and use of the Service would be entirely optional. To assure service quality as discussed above, access gateways would be provisioned as a pair, in which a second access gateway would be included for use as a backup, allowing Subscribers to allocate their sessions across both access gateways. Therefore, a Subscriber would receive a pair of access gateways for a fee of \$5,000 per month.

The Exchange notes that the Service and accompanying fees would be subject to significant competitive forces because, as discussed in detail below, the Service is similar to that currently provided by the International Securities Exchange, LLC (“ISE”).¹³

Implementation Date

The Exchange intends to implement the proposed rule change upon the operative date of this filing and will announce its availability via an information circular to be posted on the Exchange’s website.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Act,¹⁴ and the rules and regulations thereunder that are applicable to a national securities

¹³ See Securities Exchange Release No. 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89) (allowing members to utilize a pair of dedicated gateways and adopting a fee for the use of such gateways). See also, ISE, Schedule of Fees, http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

¹⁴ 15 U.S.C. 78f.

exchange. The bases under the Act for the proposed rule change are: (i) the requirement under Section 6(b)(4)¹⁵ that the rules of an exchange be designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities; and (ii) the requirement under Section 6(b)(5)¹⁶ that the rules of an exchange be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts and practices, 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 to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act¹⁷ because it would provide for an equitable allocation of reasonable dues, fees and other charges. In particular, the proposed fee is equitable because the fee applies only to those Members and non-Members that have purchased Logical Ports and elected to become Subscribers. The Exchange notes that the Service would be a fee-based service because it would be prohibitively expensive for the Exchange to establish dedicated access gateways for every Exchange participant. As discussed above, the Service would provide Subscribers with improved risk mitigation at an increased cost. Although non-Subscribers may indirectly benefit from the Service to the extent that the Service would isolate shared gateways from potential message disruptions as a result of Subscribers' trading patterns on the dedicated gateways, the bulk of the benefits of the Service would accrue only to Subscribers. It is therefore equitable that

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(4).

only Subscribers be allocated a fee for the Service and that Members and non-Members that choose to utilize only shared gateways continue to be assessed no fee. In addition, the Exchange believes that the proposed rule change constitutes an equitable allocation of fees because all similarly situated Members and non-Members would be charged the same amount (all shared gateways are free whereas all dedicated gateways would be \$5,000 per month), based on their preference for either a shared gateway or a dedicated gateway.

The Exchange believes that the proposed fee for the Service is reasonable because the Service would be optional, available to all Members and non-Members who have Logical Ports and that the fees charged for the Service would be the same for all Subscribers. In addition, the proposed fee would be reasonable because the fee is a reflection of the cost of necessary hardware, software and infrastructure costs, maintenance fees and staff support costs. The revenue generated by the Service would pay for the development, marketing, technical infrastructure and operating costs of the Service. Profits generated above these costs would help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream would allow the Exchange to offer the Service at a reasonable rate, consistent with the similar service currently provided by the ISE and discussed in more detail below.¹⁸

In addition, the Exchange notes that it operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees. As discussed above, the Service would be optional. If Members and/or non-Members deem the

¹⁸ See Securities Exchange Release No. 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89) (allowing members to utilize a pair of dedicated gateways and adopting a fee for the use of such gateways). See also, ISE, Schedule of Fees, http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

proposed fee for the Service to be unreasonable or to outweigh the benefits of the Service, such Members and/or non-Members would be under no obligation to subscribe to or continue to subscribe to the Service. These market forces would act as a restraint on excessively high fees because if the market judged that the Service was overpriced, the resulting lack of interest would render the Service irrelevant.

Furthermore, the Exchange believes that its fee for the Service is reasonable because it is within industry norms, as it is comparable to that assessed by ISE for its dedicated gateway service. Currently, ISE charges its members a monthly fee of \$250 per shared gateway and provides the option to utilize a pair of dedicated gateways for a fee of \$2,000 per month.¹⁹ The Exchange believes that its pricing (\$5,000 per dedicated gateway pair per month) is competitive with that offered by ISE because, although the cost of a dedicated gateway pair would be higher, the Exchange currently allows dedicated gateway Subscribers as well as its other Members and non-Members to utilize multiple shared gateways at no charge.

Lastly, the Exchange believes that the proposed fee is reasonable because payment for the Service on a monthly basis would provide flexibility and administrative benefits. Subscribers that choose to cancel the Service within the thirty (30) days' notice would have no recurring obligation. By offering payment for the Service on a month-to-month basis, the Exchange assumes the risk of termination by Subscribers prior to such time that it is able to recoup the costs of hardware, software, and operational resources necessary to provide the Service.

¹⁹ See ISE, Schedule of Fees, http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

The Exchange believes that the proposed rule change is also consistent with the objectives of Section 6(b)(5) of the Act,²⁰ which requires, among other things, that the Exchange's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are 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. The Exchange believes that this proposal would not unfairly discriminate between customers, issuers, brokers, or dealers because purchase of the Service would not be a prerequisite for participation on the Exchange. Only those Members and non-Members that deem the Service to be of sufficient overall value and usefulness would purchase it. The fees applicable to the Service would apply uniformly to all Subscribers. While Members and non-Members may opt for a dedicated gateway, those that do not will continue to be able to access the Exchange via a shared gateway. The Exchange further notes that it would, on an ongoing basis, continue to carefully monitor incoming and outgoing message traffic across all access gateways (shared and dedicated) so that available capacity is adequate to support Exchange message traffic. Additionally, the Exchange would continue to install additional shared access gateways as needed so that consistent capacity levels are maintained. Furthermore, the Exchange notes that both shared and dedicated gateway options consist of identical hardware and software with identical capacity and capabilities, offering equivalent latency under the same loads. To the extent that the load on a Subscriber's dedicated gateway is less than the load on a

²⁰ 15 U.S.C. 78f(b)(5).

shared gateway, a Subscriber normally would expect reduced latencies in sending orders to the Exchange through its dedicated gateway. In this regard, the Service is similar to other types of services provided by self-regulatory organizations that offer higher levels of service for a higher fee.²¹ Other than the reduced latencies due to reduced gateway load, the Exchange believes that there are no material differences in terms of access to the Exchange between Subscribers and Members and non-Members that choose not to subscribe to the Service. Thus, access to the Exchange would continue to be offered on fair and non-discriminatory terms.

In providing access to a pair of access gateways, the Service is also designed to allow Subscribers to mitigate risks associated with potentially fraudulent and manipulative acts and practices that may adversely affect the Subscriber's trading experience. If, for example, a firm attempted to manipulate the submission of order flow into shared access gateways by directly or indirectly causing a surge in message traffic to be sent to the Exchange, Subscribers would, to an extent, mitigate the risks associated with such a manipulative tactic, as they would be insulated from all such external order flow.

²¹ For example, many exchanges allow their member and non-member organizations the option to pay a higher price in exchange for a more stable and/or efficient connection, such as that obtained through co-location services or payment for logical ports. See, e.g., Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (approving fees charged by NYSE for its co-location services); Securities Exchange Act Release No. 62397 (June 28, 2010) 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019) (approving fees charged by NASDAQ for its co-location services); see also NASDAQ Stock Market LLC, Price List – Trading Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2> (listing fees for use of logical ports); BATS Exchange, Inc. & BATS Y-Exchange, Inc., Exchange Fee Schedule, http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf (listing fees for logical ports); EDGA Exchange, Inc., EDGA Exchange Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx> (listing fees for logical ports).

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

The Exchange believes that the Service would neither increase nor decrease intramarket competition because the Service is available to all Members and non-Members on a uniform and voluntary basis. As the Exchange currently supports access through shared access gateways and strives to ensure that all access gateways maintain a consistent level of capacity, the use of the Service by a Member or non-Member would be driven in part by their relative tolerance for the risks associated with trading disruptions.

The Exchange notes that there is significant competition among market centers for higher quality services at a premium, including, but not limited to, services related to connectivity. By introducing the proposed Service, the Exchange believes that it would be providing an additional service similar to that currently offered by ISE.²² As such, the Service would increase competition by providing Members with additional options related to connectivity. The Exchange therefore believes that the Service would increase intermarket competition because it may attract order flow from market participants interested in the benefits offered by the Service that might otherwise send their order flow to competing venues. Alternatively, if demand for the Service does not meet expectations, the Service would neither increase nor decrease intermarket competition because the Service would fail to persuade market participants to send their order flow to the Exchange rather than to competing venues.

²² See ISE, Schedule of Fees, http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

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 its Members or other interested parties.

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

The portion of the foregoing proposed rule change pertain to fees for the EdgeRisk Gateway has become effective pursuant to Section 19(b)(3)(A)²³ of the Act and paragraph (f)(2) of Rule 19b-4²⁴ thereunder.

Additionally, because the portion of the foregoing proposed rule change pertaining to the establishment of the EdgeRisk Gateway service does not: (1) significantly affect the protection of investors or the public interest; (2) 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) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 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.

designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that Members and non-Members may immediately obtain the EdgeRisk Gateway to potentially assist them in mitigating risks associated with excess message traffic and programmatic mistakes.²⁷ Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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.

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-2013-21 on the subject line.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2013-21. 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-2013-21 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.²⁸

Kevin M. O'Neill
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).