

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70162; File No. SR-EDGX-2013-31)

August 12, 2013

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 2.5 to Outline the Continuing Education Requirements for Series 56 Licensees and its Fee Schedule to Include Fees for the Series 56 Examination and its Related Continuing Education Requirements

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 August 6, 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 Exchange. 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: (1) Exchange Rule 2.5 to: (i) outline the continuing education requirements for Authorized Traders³ of Members⁴ registered solely as Proprietary Traders⁵ by having successfully completed the Proprietary Trader Qualification Examination (“Series 56”); and (ii) make a clarifying change to the Interpretation and Policy .06; and (2) the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Authorized Trader” is defined as “a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange’s trading facilities on behalf of his or her Member or Sponsored Participant.” See Exchange Rule 1.5(c).

⁴ “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 Exchange Rule 1.5(n).

⁵ “Proprietary Trader” is defined under Interpretation and Policy .06(2) to Exchange Rule 2.5.

fees and rebates applicable to Members of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (“Fee Schedule”) to include fees for the Series 56 examination and its related continuing education requirements. 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

The Exchange proposes to amend: (1) Rule 2.5 to: (i) outline the continuing education requirements for Authorized Traders of Members registered solely as Proprietary Traders by having successfully completed the Series 56 examination; and (ii) make a clarifying change to the Interpretation and Policy .06; and (2) its Fee Schedule to include fees for the Series 56 examination and its related continuing education requirements.

On February 1, 2012, the Exchange amended its rules to recognize a new category of limited representative registration for Proprietary Traders⁶ by expanding its registration requirements to include the Series 56 examination as one of the applicable qualification examinations accepted by the Exchange.⁷ The Series 56 examination program is administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange.

The Exchange permits the Series 56 examination for Proprietary Traders that engage solely in proprietary trading on the Exchange so long as certain conditions are met. First, the Member must be a proprietary trading firm.⁸ Second, the Authorized Trader of a Member must be considered a Proprietary Trader. Interpretation and Policy .03 of Exchange Rule 2.5 identifies the Series 56 as an appropriate qualification examination for Proprietary Traders’ limited representative registration.⁹

⁶ Interpretation and Policy .06(2) of Exchange Rule 2.5 defines a Proprietary Trader as an Authorized Trader whose activities in the investment banking or securities business are limited solely to proprietary trading; passes an appropriate qualification examination; and is an associated person of a proprietary trading firm as defined in Interpretation and Policy .06(1) of Exchange Rule 2.5.

⁷ See Securities Exchange Act Release No. 66383 (February 10, 2012), 77 FR 9714 (February 17, 2012) (SR-EDGX-2012-04) (Notice of Filing and Immediate Effectiveness).

⁸ If amended as proposed, Interpretation and Policy .06(1) of Exchange Rule 2.5 would define a proprietary trading firm as a firm that embodies the following characteristics: the Member is not required by Section 15(b)(8) of the Act to become a FINRA member; all funds used or proposed to be used by the Member for trading are the Member’s own capital, traded through the Member’s own accounts; the Member does not, and will not have “customers”; and all Principals and Authorized Traders of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

⁹ For Authorized Traders of Members who do not engage solely in proprietary trading, the Exchange requires the General Securities Representative Examination (“Series 7”) or equivalent foreign examination module approved by the Exchange as defined in Interpretation and Policy .05 of Exchange Rule 2.5. See Interpretation and Policy .03 of Exchange Rule 2.5.

Series 56 Continuing Education Requirements

The Exchange now proposes to amend Interpretation and Policy .04 to Rule 2.5 to outline the continuing education requirements for Authorized Traders of Members registered solely as Proprietary Traders by having successfully completed the Series 56 examination. Like the Series 56 exam, FINRA is to administer the continuing education program on behalf of the Exchange. Proprietary Traders who hold the Series 56 registration pursuant to Interpretation and Policy .04 to Rule 2.5 would be required to complete the related continuing education administered by FINRA on behalf of the Exchange known as the S501. Authorized Traders of Members who hold the Series 7 registration would continue to complete the Regulatory Element for Continuing Education Requirement (“Regulatory Element”) known as the S101.

The Exchange also proposes to amend Interpretation and Policy .04 to Rule 2.5 to apply the same criteria to the S501 as it currently requires for the S101 as part of the Regulatory Element. First, like the Regulatory Element, the S501 must be completed within 120 days after the respective registration anniversary date. A person’s initial registration date, also known as the “base date,” shall establish the cycle of anniversary dates. Second, Series 56 registrants who have not completed the S501 within the prescribed time frames will have their registrations deemed inactive until such time as such requirements have been satisfied. Any person whose registration has been deemed inactive shall cease all activities as a Proprietary Trader and will be prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is terminated may reactivate the registration only by reapplying for registration under the Exchange rules.

Similar to the requirements for the Regulatory Element,¹⁰ a Proprietary Trader - Series 56 license holder will be required to re-satisfy the S501 where that person: (1) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (3) is ordered as a sanction in a disciplinary action to retake the S501 by any securities governmental agency or self-regulatory organization.

Like the Regulatory Element, the retaking of the S501 must commence within 120 days of the Proprietary Trader - Series 56 license holder becoming subject to the statutory disqualification, in the case of (1) above, or the disciplinary action becoming final, in the case of (2) and (3) above. The date of the disciplinary action shall be treated as such person's new base date with the Exchange.

Any Proprietary Trader - Series 56 license holder who has terminated association with a Member and who has, within two years of the date of termination, become reassociated in a registered capacity with a Member shall satisfy the S501 at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

The Exchange proposes to include the Series 56 continuing education requirement in its rules to ensure Authorized Traders of Members maintain specified levels of competence and knowledge generally applicable to proprietary trading, thereby enhancing the quality of

¹⁰ See Interpretation and Policy .04 of Exchange Rule 2.5.

Authorized Traders on the Exchange. Thus, the codification of these requirements in the proposed amendments to Rule 2.5 makes clear to Members their requirements related to the Series 56 exam, including applicable continuing education requirements.

The Exchange proposes to implement the Series 56 continuing education program upon availability in WebCRD[®], the central licensing and registration system operated by FINRA (“WebCRD”).

Clarification to Interpretation and Policy .06 to Rule 2.5

The Exchange proposes to delete unnecessary language from Interpretation and Policy .06 to Rule 2.5. Currently, Interpretation and Policy .06(1) of Rule 2.5 defines a proprietary trading firm. As part of the definition, the Member must not be required by Section 15(b)(8) of the Act¹¹ to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act.¹² The Exchange proposes to delete the requirement that the Member must also be a member of another registered securities exchange. The proprietary trading firm need only be a current Exchange Member and not required to be a FINRA Member by Section 15(b)(8) of the Act.¹³ Therefore, the Exchange proposes to delete this requirement from its rules.

Series 56 Exam and Continuing Education Fees

The Exchange proposes to add to its Fee Schedule a \$195 fee per person, per Series 56 examination and a \$60 per person, per session fee for the related continuing education. The Exchange’s Fee Schedule does not currently set forth the fees applicable for the Series 7 and Regulatory Element as these programs are within FINRA’s jurisdiction and collected by FINRA

¹¹ 15 U.S.C. 78o(b)(8).

¹² 15 U.S.C. 78f(g).

¹³ 15 U.S.C. 78o(b)(8).

from its members. On the contrary, the Series 56 and its continuing education requirements apply to Members that are not required by Section 15(b)(8) of the Act¹⁴ to become a FINRA member. Therefore, the Exchange proposes to include these fees in its Fee Schedule to make clear to Members the costs of the Series 56 exam and its related continuing education. However, Members would continue to submit the exam fee to FINRA, as well as the fee for continuing education.¹⁵ The Exchange will not invoice or collect these fees.

The fees are designed to reflect the costs incurred in maintaining and developing the examination and continuing education program to ensure their content is and continues to be adequate in testing the competence and knowledge generally applicable to proprietary trading.

2. Statutory Basis

Series 56 Continuing Education Requirements

The Exchange believes that its proposal to require continuing education for Authorized Traders of Members that hold the Proprietary Trader - Series 56 license is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(c)(3)(B) of the Act.¹⁷ Under that section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for Exchange Members and their associated persons, in particular, by offering an alternative continuing education program for Proprietary Traders that more closely reflects the practical knowledge that is a pre-requisite for proprietary trading. Pursuant to this statutory obligation, the Exchange proposes to require Authorized Traders of Members that

¹⁴ 15 U.S.C. 78o(b)(8).

¹⁵ The Exchange notes that FINRA has historically collected the \$195 Series 56 examination fee on behalf of the Exchange to cover its cost of administering the Series 56 exam program.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(c)(3)(B).

hold the Series 56 license to complete the related continuing education. The Exchange believes the Series 56 continuing education requirement would enable Authorized Traders of Members to maintain specified levels of competence and knowledge generally applicable to proprietary trading. Thus, the codification of these requirements in the proposed amendments to Rule 2.5 makes clear to Members their requirements related to the Series 56 exam, including applicable continuing education requirements, by codifying such requirements in the Exchange's rules.

In addition, the Exchange believes that the proposed rule change is consistent with the principles of Section 11A(a)(1)(C)(ii) of the Act¹⁸ in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule will promote uniformity of regulation across markets, thus reducing opportunities for regulatory arbitrage.¹⁹ The proposed rule change helps ensure that all persons conducting a securities business through the Exchange are appropriately registered and maintain specified levels of competence, as the Commission expects of all self-regulatory organizations.

Clarification to Interpretation and Policy .06 to Rule 2.5

The Exchange believes that the proposal to delete unnecessary language from Interpretation and Policy .06 to Rule 2.5 is consistent with Section 6(b) of the Act²⁰ and furthers the objectives of Section 6(b)(5) of the Act,²¹ in that it is designed to 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, and, in general, protect investors and the public interest by eliminating unnecessary confusion with respect to the Exchange's rules. The Exchange proposes

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(ii).

¹⁹ See infra note 24.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

to delete the requirement that the Member must also be a member of another registered securities exchange because it is superfluous.

Series 56 Exam and Continuing Education Fees

The Exchange also believes that the proposed examination and continuing education fees are consistent with the objectives of Section 6 of the Act,²² in general, and furthers the objectives of Section 6(b)(4),²³ in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members. The Series 56 examination and continuing education fees are reasonably designed to allow FINRA to cover its cost of administering the Series 56 exam program on behalf of the Exchange. The fee for the Series 56 exam is greater than the fee for continuing education because the exam fee is also designed to cover the costs associated with developing not just the Series 56 exam, but also the related S501 continuing education program. The S501 continuing education fee is set to only cover the costs of administering the continuing education sessions. The Exchange notes that it will not invoice or collect funds from Members that are subject to these fees because these fees will be paid directly to FINRA. FINRA incurs costs in maintaining and developing the examination and continuing education program to ensure their content is and continues to be adequate in testing the competence and knowledge generally applicable to proprietary trading. Therefore, the Exchange believes it is reasonable and equitable to include these fees in its Fee Schedule to make clear to Members the costs of the Series 56 exam and its related continuing education requirement. The Exchange also believes these fees are reasonable because it understands that other exchanges will be assessing identical fees to be collected by FINRA for the Series 56 exam

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(4).

and continuing education program.²⁴ In addition, the Exchange believes these fees are not unfairly discriminatory in that they apply to all Members uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition
Series 56 Continuing Education Requirements

The Exchange does not believe that its proposal to require continuing education for Authorized Traders of Members that hold the Series 56 license will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended, because Proprietary Traders must hold a Series 56 license and complete the required continuing education regardless of the exchange with which they are registered. The proposed rule change will not impose any burden on intramarket competition as all Authorized Traders of Members that are Proprietary Traders are required to pass the Series 56 exam and complete the related continuing education as outlined in Exchange Rule 2.5.

Clarification to Interpretation and Policy .06 to Rule 2.5

The proposal to delete unnecessary language from Interpretation and Policy .06(1) to Rule 2.5 does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This language is superfluous as the Exchange does not, in practice, require a proprietary trading firm to also be a member of another exchange.

²⁴ The Exchange participates in the "Proprietary Traders Examination Committee" for the Series 56 exam and continuing education requirements with the other exchanges. Through this Committee, the Exchange believes that other exchanges will be submitting proposed rule changes with the Commission to adopt the same fees for the Series 56 exam and continuing education. The exchanges that participate on the Committee include: Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT, LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; Nasdaq OMX BX, Inc.; Nasdaq OMX PHLX, LLC; BATS Y-Exchange, Inc.; BATS Exchange, Inc.; EDGA Exchange, Inc.; and the International Securities Exchange, LLC.

Series 56 Exam and Continuing Education Fees

The Exchange also does not believe that the proposed examination and continuing education fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the fees would apply uniformly to all Members. In addition, the Exchange believes that its proposal would neither increase nor decrease intermarket competition because other exchanges will be assessing identical fees to be collected by FINRA for the Series 56 exam and continuing education program.

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 change.

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

Because the foregoing proposed rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change specifies the continuing education requirements for Authorized Traders of Members registered solely as proprietary traders by having passed the Series 56 examination; deletes unnecessary language from Interpretation and Policy .06 of Exchange Rule 2.5; and adds to the Exchange's Fee Schedule the fees for the Series 56 examination and the S501. Waiver of

²⁵ 15 U.S.C. 78s(b)(3)(A).

the operative delay would allow the Exchange to clarify its rules and implement the proposed rule change without delay once the Series 56 examination fee, S501 continuing education program and the related fee are available in WebCRD, enabling its Members to comply with their examination and continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.²⁶

At any time within 60 days of the filing of this 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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-2013-31 on the subject line.

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has 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-2013-31. 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, 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 available publicly. All submissions should refer to File Number SR-EDGX-2013-31 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.²⁷

Kevin M. O'Neill
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).