

Opening Session<sup>19</sup> and After Hours Trading Session (“Extended Hours Market Maker Peg Orders”).<sup>20</sup> During the Pre-Opening Session and After Hours Trading Session, the wider Designated Percentage and Defined Limit associated with the 9:30 a.m.–9:45 a.m. and 3:35 p.m.–4 p.m. periods under Rule 11.8(e) will be applied to Extended Hours Market Maker Peg Orders for which the market maker has not designated an offset more aggressive than the Designated Percentage.

BYX believes that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers. Market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also meeting their Exchange market making obligations. In this regard, the Market Maker Peg Order, like the current market maker quoter functionality, does not ensure that the market maker is satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>21</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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>22</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum market maker quotation requirements and member obligations to comply with the regulatory requirements of the

Market Access Rule and Regulation SHO. The Exchange also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality, will serve to minimize the potential market impact caused by the implementation of the order type.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

### 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

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 such 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2012-012 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-BYX-2012-012. This file number should be included on the

subject line if email 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 Web site (<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 Web site 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 a.m. and 3 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-BYX-2012-012 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67389; File No. SR-NASDAQ-2012-81]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date for Non-Display of Primary Pegged Orders With an Offset Amount

July 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on June 28, 2012, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>19</sup> The Pre-Opening Session means the time between 8 a.m. and 9:30 a.m. Eastern Time.

<sup>20</sup> The After Hours Trading Session means the time between 4 p.m. and 5 p.m. Eastern Time.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k-1(a)(1).

Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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 a rule change to delay the implementation date for its rule change that provides for non-display of Primary Pegged Orders with an offset amount. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at the Exchange's principal office, 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 Exchange 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 Exchange 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**

NASDAQ recently submitted a proposed rule change to provide that Primary Pegged Orders with an offset amount will not be displayed,<sup>3</sup> a change that will improve system and inter-market price stability. In order to implement this change contemporaneous with the proposed adoption of a new Market Maker Peg order type,<sup>4</sup> NASDAQ is delaying the implementation date of this rule change until the third quarter of 2012. The new Market Maker Peg order with custom offset will allow market makers currently using the primary peg with offset for attributable orders to smoothly migrate to use of that order type. Some market makers use the primary peg with

offset for compliance purposes, so tying the change to the MMPO release allows for them to continue to have a pegging option to meet this requirement. While the exact implementation date is uncertain, NASDAQ will announce the exact date through a publicly disseminated alert.

##### **2. Statutory Basis**

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal 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 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. Specifically, NASDAQ believes that delaying the implementation date of non-display of primary pegged orders with an offset amount until adoption and implementation of the proposed new Market Maker pegged order will allow market participants to adjust their systems for both changes at the same time, providing efficiencies that will benefit investors and the public interest and encourage more efficient order entry practices by all market participants.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ believes that the proposed delay in the implementation of the change will not have any effect on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section

19(b)(3)(A)(i) of the Act.<sup>7</sup> 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-81 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-NASDAQ-2012-81. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

<sup>3</sup> Securities Exchange Act Release No. 66699 (March 31, 2012), 77 FR 20658 (April 5, 2012) [sic] (SR-NASDAQ-2012-041).

<sup>4</sup> Securities Exchange Act Release No. 67203 (June 14, 2012) 77 FR 37086 (June 20, 2012) (SR-NASDAQ-2012-066).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

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-NASDAQ-2012-81 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67380; File No. SR-EDGA-2012-29]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

July 10, 2012.

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 June 29, 2012, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://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

Flag DM is yielded where non-displayed orders add or remove liquidity using the Mid-Point Discretionary order type.<sup>4</sup> In order to provide additional transparency to Members and for the reasons discussed below, Flag DM is proposed to be bifurcated into two flags: Flag DM (adds liquidity in the discretionary range) and Flag DT (removes liquidity in the discretionary range). The Exchange proposes to continue to charge a fee of \$0.0005 per share for Flags DM and DT.<sup>5</sup>

In addition, the Exchange proposes to delete Footnote 18 that is appended to Flag DM in the fee schedule because the proposed Flags DM and DT will count towards volume tiers as the Exchange can now differentiate between non-displayed liquidity that adds liquidity in the discretionary range from non-displayed liquidity that removes liquidity in the discretionary range.<sup>6</sup>

The Exchange also proposes to amend Flag K to only apply to Members' orders routed to NASDAQ OMX PSX ("PSX") using the ROUC or ROUE routing strategy as defined in Rule 11.9(b)(3). The Exchange proposes to reduce the rate from \$0.0025 per share to \$0.0005 per share, which represents a pass-through of the Exchange's rate for

<sup>4</sup> See Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR-EDGA-2012-22).

<sup>5</sup> See SR-EDGA-2012-24 (June 19, 2012) (describing the Exchange's proposal to amend its fee schedule pursuant to Rule 15.1(a) and (c) regarding Flag DM).

<sup>6</sup> See SR-EDGA-2012-24 (June 19, 2012) (where the Exchange excluded the volume generated from Flag DM from counting towards the volume tiers because a Member could potentially receive Flag DM if the Member either added or removed liquidity using the Midpoint Discretionary Order).

routing orders to PSX, in response to the proposed pricing changes in PSX's pending filing with the Commission.<sup>7</sup> Accordingly, where Members' orders are routed to the BATS BZX Exchange ("BATS BZX") using the ROBA routing strategy (EDGA + BATS), the Exchange proposes to apply Flag X, which is yielded when Members route orders through EDGA and the Exchange assesses a charge of \$0.0029 per share.

Similarly, the Exchange also proposes to amend the rate for Flag RS, which is yielded when Members route orders to PSX that add liquidity. The Exchange proposes to amend the pricing for Flag RS from a rebate of \$0.0024 per share to a charge of \$0.0005 per share in response to PSX's pending filing, which represents a pass-through of the Exchange's rate for routing orders to PSX.

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2012.

###### 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed technical amendment to bifurcate Flag DM into Flags DM and DT promotes market transparency and improves investor protection by adding additional transparency to its fee schedule by more precisely delineating for Members whether they are "adders of liquidity" or "removers of liquidity" for purposes of Members' non-displayed orders using the Mid-Point Discretionary order type. In addition, the Exchange believes that counting Flags DM and DT towards volume tiers is reasonable and equitable as the Exchange can now differentiate between non-displayed liquidity that adds liquidity in the discretionary range from non-displayed liquidity that removes liquidity in the discretionary range, as explained above. Including Flags DM and DT in volume tiers allows their associated volume to be tracked by the Exchange in the appropriate tier(s), which may incent Members to increase use of the volume tiers in the fee

<sup>7</sup> See PSX's Equity Trader Alert #2012-28 at <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2012-28> (discussing PSX's pending fee changes effective July 2, 2012).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.