

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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at NYSE's principal office or on the Web site at [www.nyse.com](http://www.nyse.com). 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–NYSEARCA–2012–143, and should be submitted on or before February 1, 2013.

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. 34–68595; File No. SR–EDGA–2012–47]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.5(c) (NBBO Offset Peg Order)

January 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on December 27, 2012, the EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the

Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. 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 [www.directedge.com](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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 11.5(c), the NBBO Offset Peg Order. As described in the Exchange's filing to create the NBBO Offset Peg Order,<sup>3</sup> the NBBO Offset Peg Order enables Users<sup>4</sup> to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the “NBB”) and National Best Offer (the “NBO”, and together with the NBB, the “NBBO”), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, enables Market Makers to comply independently with the requirements of Regulation SHO<sup>5</sup> under the Securities

Exchange Act of 1934 (the “Act”) and Rule 15c3–5<sup>6</sup> under the Act (the “Market Access Rule”).

As described in the Exchange's filing to create the NBBO Offset Peg Order: upon entry and at any time the price of the order reached the ‘Defined Limit’, or moved a specified number of percentage points away from the ‘Designated Percentage’ toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances.<sup>7</sup>

The Exchange proposes to amend the text of Rule 11.5(c)(15) to not allow the User to cancel or reject the order under the circumstances outlined above. Therefore, the Exchange proposes to delete the following text in Rule 11.5(c)(15): “unless instructed by the User upon order entry to cancel or reject rather than adjust based on the last reported sale from the single plan processor.” The text of the rule will now read that:

[u]pon reaching the Defined Limit (as defined in Rule 11.21(d)(2)(F)), the price of an NBBO Offset Peg Order bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, respectively, or if there is no NBB or NBO at such time, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If an NBBO Offset Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage toward the then current NBB or NBO, the price of such bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB and NBO. If there is no NBB or NBO at such time, the order will be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor.

Thus, when processing NBBO Offset Peg Orders, the System will not condition adjustment of the price upon the User's instructions.

The Exchange originally stated in SR–EDGA–2012–44 that it “intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market

<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>3</sup> See Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44).

<sup>4</sup> As defined in Rule 1.5(ee).

<sup>5</sup> 17 CFR 242.200 through 242.204.

<sup>6</sup> 17 CFR 242.15c3–5.

<sup>7</sup> See Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44).

participants in an information circular to be posted on the Exchange's Web site."<sup>8</sup> The Exchange proposes to revise this implementation date to on or about April 15, 2013. This additional time will enable the Exchange to assess the usefulness of the NBBO Offset Peg Order in light of the upcoming implementation of the National Market System Plan to Address Extraordinary Market Volatility (as amended, the "Plan") as approved by the Commission<sup>9</sup> and proposed changes to market making quoting requirements through uniform industry-wide amendments to Designated Percentages<sup>10</sup> and Defined Limits<sup>11</sup> to realign the percentages based on the Plan's Appendix A Percentage Parameters.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>12</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> 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. The Exchange believes that the proposed rule filing meets these requirements because it eliminates certain rule text to conform with NASDAQ's Market Maker Peg Order, which is a similar order type to the NBBO Offset Peg Order,<sup>14</sup> and updates the implementation date in light of the Plan and proposed changes to market making quoting requirements. Thus, the Exchange believes that the proposed rule change promotes the efficient execution of investor transactions, and thus investor confidence, over the long term.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will increase competition among the exchanges because the NBBO Offset Peg Order will directly compete with substantially similar existing order types offered by other exchanges.<sup>15</sup>

### 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 change 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder.

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.

<sup>15</sup> See Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR-NASDAQ-2012-066) (order approving NASDAQ's Market Maker Peg Order available for exchange market makers). See Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR-BATS-2012-026) (order approving BATS's Market Maker Peg Order available for exchange market makers). See also Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR-BYX-2012-012) (order approving BATS Y-Exchange Inc.'s Market Maker Peg Order available for exchange market makers).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 satisfied this requirement.

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-EDGA-2012-47 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-EDGA-2012-47. 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 10:00 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-EDGA-2012-47 and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> See Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR-EDGA-2012-44).

<sup>9</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Plan on a pilot basis).

<sup>10</sup> As defined in Rule 11.21(d)(2)(D).

<sup>11</sup> As defined in Rule 11.21(d)(2)(F).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR-NASDAQ-2012-066).