

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71444; File No. SR-EDGA-2014-01]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IX of Its Rulebook

January 30, 2014.

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 January 16, 2014, 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 substantially 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 Chapter IX of its rulebook to incorporate certain rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") and the NASDAQ Stock Market LLC ("NASDAQ") relating to arbitration and mediation, in addition to making certain non-substantive changes. 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 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

##### Background and General Description of Proposed Rule Change

On July 30, 2007, the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange LLC, and NYSE Regulation, Inc. ("NYSE") consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members ("17d-2 Agreement").<sup>3</sup> The 17d-2 Agreement was entered into in accordance with the requirements of Rule 17d-2 of the Commission,<sup>4</sup> which permits self-regulatory organizations ("SROs") to allocate regulatory responsibilities with respect to common members and common rules. On January 5, 2010, the Exchange and FINRA entered into a Regulatory Services Agreement ("RSA"), whereby FINRA was retained to perform certain regulatory services on behalf of the Exchange for non-common rules. On May 13, 2013, the Exchange and FINRA amended the RSA and retained FINRA to perform market surveillance functions as of July 2013. Accordingly, since Exchange launch in July 2010, FINRA has been performing all arbitration, mediation, and other dispute resolution services, as may be needed from time to time, on behalf of EDGA.

To facilitate FINRA's performance of these functions under the RSA and to further harmonize the rules of FINRA and the Exchange generally, the Exchange is proposing to conform the text of its rules governing arbitration and mediation (Chapter IX) to the FINRA Code of Arbitration Procedure for Customer Disputes (12000 Series), FINRA Code of Arbitration Procedure for Industry Disputes (13000 Series) and the FINRA Code of Mediation (14000 Series).

The Exchange proposes to make the following changes to its current rules in Chapter IX of its rulebook.

##### Proposed Amendments to Current Rules

The Exchange proposes to amend current Rule 9.1 (Code of Arbitration) to make the rule substantially similar to NASDAQ Rule 10100.<sup>5</sup> The Exchange proposes to replace the reference to

NASD Code of Arbitration with FINRA Code of Arbitration,<sup>6</sup> clarify the meaning of "Exchange arbitrations,"<sup>7</sup> and add a sentence stating that Members must comply with FINRA arbitration rules as if they were rules of the Exchange.

The Exchange proposes to replace current Rule 9.2 (Jurisdiction) with amended Rule 9.2 (Matters Eligible for Submission), which is substantially similar to FINRA Rule 10101 and NASDAQ Rule 10101.<sup>8</sup> Amended Rule 9.2 will state that the Exchange adopts the FINRA Code of Arbitration for any dispute, claim or controversy arising out of or in connection with the business of any Member, or arising out of the employment or termination of employment of associated person(s) with any Member: between or among Members; between or among Members and associated persons; and between or among Members or associated persons and public customers, or others, except for any type of dispute, claim, or controversy that is not permitted to be arbitrated under the FINRA Code of Procedure.

The Exchange proposes to amend current Rule 9.3 (Predispute Arbitration Agreements) to incorporate FINRA Rule 2268<sup>9</sup> by reference, instead of restating the predispute arbitration agreement rules in full.

The Exchange proposes to amend current Rule 9.5 (Payment of Awards), to re-name its title as "Failure to Act under Provisions of FINRA Code of Arbitration," to expand the rule to include additional conduct deemed inconsistent with just and equitable principles of trade and a violation of Rule 3.1 (Business Conduct of Members), using the language of FINRA/NASDAQ IM-10100, and FINRA IM-12000 and IM-13000.<sup>10</sup> These prohibited acts include: failure to submit a dispute for arbitration under the FINRA Code of Arbitration as required by the FINRA Code of Arbitration; failure to comply with any injunctive order issued pursuant to the FINRA Code of Arbitration; failure to appear or to produce any document in his or her or its possession or control as directed pursuant to provisions of the FINRA Code of Arbitration; failure to

<sup>6</sup> See FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes); FINRA Rule 13000 (Code of Arbitration Procedure for Industry Disputes).

<sup>7</sup> They would be defined as "every claim, dispute or controversy arising out of or in connection with matters eligible for submission under Rule 9.2."

<sup>8</sup> See FINRA Rules 10101 and NASDAQ Rule 10101.

<sup>9</sup> See FINRA Rule 2268.

<sup>10</sup> See FINRA Rules IM-10100, IM-12000, and IM-13000. See also NASDAQ Rule IM-10100.

<sup>3</sup> See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (Aug. 1, 2007).

<sup>4</sup> 17 CFR 240.17d-2.

<sup>5</sup> See NASDAQ Rule 10100.

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

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

honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition under the FINRA Code of Arbitration where timely motion has not been made to vacate or modify such award pursuant to applicable law; or, failure to comply with a written and executed agreement obtained in connection with a mediation submitted for disposition pursuant to the FINRA Code of Mediation.<sup>11</sup> Rule 9.5(b) is proposed to be amended to provide that action by Members requiring associated persons to waive the arbitration of disputes contrary to the provisions of the FINRA Code of Arbitration is a violation of Exchange Rule 3.1.

The Exchange proposes to amend current Rule 9.6 to extend the application of the rule (currently applicable to arbitration) to mediation.

The Exchange proposes to add proposed Rule 9.7 (Mediation) to state that FINRA's mediation services, as governed by the 14000 Series of FINRA's Rules (the Code of Mediation Procedure), are also available to Members who voluntarily agree to submit matters for mediation. The Exchange also proposes to incorporate by reference the FINRA Code of Mediation into its rules so that Members have the same obligations to comply as if such rules and interpretations were part of the Exchange's rules.

The Exchange proposes to add Rule 9.8 (Regulatory Services Agreement) to state that FINRA staff will perform arbitrations and mediations on behalf of the Exchange pursuant to a regulatory services agreement ("RSA") with FINRA in accordance with the FINRA Codes of Arbitration and Mediation.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

<sup>11</sup> See FINRA Rule 14000 Series (Code of Mediation Procedure).

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

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

The proposed changes will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members. As previously noted, the proposed rule text is substantially similar to FINRA's/NASDAQ's current rule text, which has already been approved by the Commission. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *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. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for arbitration and mediation matters, resulting in less burdensome and more efficient regulatory compliance for dual members and facilitating FINRA's performance of its regulatory functions under the RSA.

### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6)<sup>15</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for thirty (30) days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

with a brief description and text of the proposed rule change, at least five (5) business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange provided 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 (5) business days prior to the date of filing.<sup>16</sup> The proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>17</sup> because the proposed rule change would not significantly affect investors or the public interest; rather, the proposed rule change will promote greater harmonization between the Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. Additionally, the proposed rule change does not raise any new policy issues not previously considered by the Commission nor impose any significant burden on competition because it would result in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>19</sup> In addition, in its guidance on the proposed rules of SROs,<sup>20</sup> the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6). The Commission noted that "a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolved such

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> See Securities and Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

policy issue in a manner consistent with such prior approval.”<sup>21</sup> As discussed herein, the rule changes proposed herein are based on parallel NASDAQ and FINRA rules on arbitration and mediation. The proposed rule change would allow greater consistency between EDGA and FINRA rules, which should benefit EDGA and FINRA members, regulators, and the investing public. In addition, the Exchange requests the Commission waive the 30-day operative delay to provide greater harmonization between Exchange and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA’s performance of its regulatory functions.

Based on the foregoing, the Commission believes that the proposed rule change should become immediately effective and waives the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act so that the Exchange may immediately implement this rule change.<sup>22</sup>

At any time within sixty (60) days of the filing of such 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2014-01 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-2014-01. 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-2014-01 and should be submitted on or before February 26, 2014.

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. 34-71449; File Nos. SR-EDGA-2013-34; SR-EDGX-2013-43]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, in Connection With the Proposed Business Combination Involving BATS Global Markets, Inc. and Direct Edge Holdings LLC

January 30, 2014.

#### I. Introduction

On November 29, 2013, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX” and, together with EDGA, the “DE Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant

to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes in connection with the proposed business combination (“Combination”) of their indirect parent company, Direct Edge Holdings LLC (“DE Holdings”), and BATS Global Markets, Inc., the parent company of BATS Exchange, Inc. (“BATS”) and BATS-Y Exchange, Inc. (“BYX” and, together with BATS, the “BATS Exchanges”) (the DE Exchanges and the BATS Exchanges are the “Exchanges”).<sup>4</sup> On December 9, 2013, EDGA and EDGX each filed an Amendment No. 1 to their respective proposed rule changes. The proposed rule changes, as modified by Amendment No. 1, were published for comment in the **Federal Register** on December 17, 2013.<sup>5</sup> The Commission received no comments on the proposal. On January 29, 2014, EDGA and EDGX each filed an Amendment No. 2 to their respective proposed rule changes.<sup>6</sup> This Order approves the proposed rule changes, as modified by Amendment Nos. 1 and 2.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule changes are consistent with

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Commission approved corresponding proposed rule changes submitted by the BATS Exchanges relating to the Combination. See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (approving SR-BATS-2013-059 and SR-BYX-2013-039) (“BATS Exchanges Approval Order”).

<sup>5</sup> See Securities Exchange Act Release Nos. 71046 (December 11, 2013), 78 FR 76416 (SR-EDGA-2013-34) and 71045 (December 11, 2013) 78 FR 76480 (SR-EDGX-2013-43) (“Notices”).

<sup>6</sup> Amendment No. 2 makes technical amendments to language in the DEI Certificate of Incorporation (as defined below) and the DE Exchange Certificate of Incorporation (as defined below) based on comments from the State of Delaware, Department of State, Division of Corporations. Specifically, these comments are to: (1) Add references to certain applicable Delaware General Corporations Law sections in the DEI Certificate of Incorporation, (2) add the state and zip code for DEI’s registered office, and (3) add several introductory paragraphs describing the Delaware filing history of the DE Exchanges Certificate of Incorporation. Amendment No. 2 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

<sup>7</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> *Id.* at 40149.

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

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