

*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-NYSEArca-2012-63 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 NYSEArca-2012-63. 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 NYSEArca-2012-63 and should be submitted on or before July 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67266; File No. SR-EDGX-2012-21]

**Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to New Market Access Risk Management Service, EdgeRisk Controls<sup>SM</sup>**

June 26, 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 19, 2012, 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**

EDGX Exchange, Inc. ("EDGX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to establish a new market access risk management service, called EdgeRisk Controls<sup>SM</sup> (the "Service").

**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 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**

*Background on Market Access Rule*  
On November 3, 2010, the Commission adopted Rule 15c3-5 under the Act. Rule 15c3-5, known as the "Market Access Rule", governs risk

management controls by broker-dealers with market access. The Market Access Rule had an effective date of January 14, 2011, with phased-in compliance dates of July 14, 2011, and November 30, 2011.<sup>3</sup>

Among other things, the Market Access Rule requires that any broker-dealer with market access,<sup>4</sup> or that provides a customer or any other person with market access, must establish, document and maintain a system of risk management controls and supervisory procedures that are reasonably designed to manage the financial, regulatory and other risks of this business activity. These controls include financial risk management controls reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer itself, and to prevent the entry of erroneous orders. In addition, the Market Access Rule requires certain regulatory risk management controls that, among other things, prevent the entry of orders unless compliance with applicable regulatory requirements has been satisfied on a pre-order entry basis, and restrict access to trading systems and technology that provide market access to persons and accounts that have been pre-approved and authorized by the broker-dealer. These regulatory risk management controls also include measures designed to prevent the entry of orders for a broker-dealer, customer or other person if such person is restricted from trading those securities, and to assure that appropriate surveillance personnel receive immediate, post-trade execution reports that result from market access.

These risk management controls and associated supervisory procedures must be under the direct and exclusive control of the broker-dealer that is subject to the Market Access Rule. While a broker-dealer can use third-party providers to satisfy some or all of these requirements, the broker-dealer is nonetheless required to ensure that whatever technology or other services

<sup>3</sup> See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2011) [sic] (File No. S7-03-10). See also Securities Exchange Act Release No. 64798 [sic] (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7-03-10) (providing limited extension of compliance date for certain requirements); Securities Exchange Act Release No. 65132 (August 15, 2011), 76 FR 51457 (August 18, 2011) (exempting floor broker operations of certain broker-dealers with market access from automated controls requirement of Rule 15c3-5).

<sup>4</sup> The term "market access" is defined in Rule 15c3-5(a)(1) to include, *inter alia*, access to trading in securities on an exchange or alternative trading system ("ATS") as a result of being a member or subscriber of the exchange or ATS, respectively.

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

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

<sup>29</sup> 17 CFR 200.30-3(a)(12).

are provided by such third-party are under their direct and exclusive control. Thus, the broker-dealer must retain the ability to make adjustments to and monitor the operation of the controls.

#### *Description of EdgeRisk Controls<sup>SM</sup>*

To assist Members<sup>5</sup> in satisfying their compliance obligations under the Market Access Rule, the Exchange is proposing to offer the Service.<sup>6</sup> This optional Service would act as a risk filter by causing the orders of Members, and/or their Sponsored Participants<sup>7</sup> if applicable, to be evaluated by the Service against an array of manageable threshold limits pre-selected and controlled by the Member prior to entering the Exchange's System.<sup>8</sup> Based on parameters provided to the Service by the Member, the order would be immediately passed on to the matching engine or rejected back to the Member (and its Sponsored Participant, if applicable). The Service is designed so that Members would have the ability to select from a menu of financial and regulatory controls, as well as supervisory and monitoring tools, and to manage the parameter settings of those features in real time.<sup>9</sup> To that end, the Service would enable Members to receive FIX Drop Order Copy<sup>10</sup> sessions, which include complete XPRS<sup>11</sup>/FIX conversations, as well as web-based management services to configure certain controls.

The Exchange does not guarantee that the Service offers or will offer tools sufficiently comprehensive to be the exclusive means by which Members could satisfy their compliance obligations under the Market Access Rule. The Exchange would not require Members to use the Service, nor would use of the Service by a member automatically constitute compliance

with the Market Access Rule. The Service is but one option that Members may elect to use in the efficient risk management of the Members' and/or Sponsored Participants' access to the Exchange. Members are free to use any appropriate risk management tool or service, or combination thereof, which could but is not required to include the Service. Ultimately, it is the Member's responsibility, and not the Exchange's, to demonstrate its compliance with the Market Access Rule and the Exchange's Rule 11.3.<sup>12</sup> The Exchange will not provide preferential treatment to Members electing to use the Service, nor will the Exchange discriminate against Members who choose not to utilize the Service.

Finally, the Service does not supersede other controls that the Exchange and its affiliated routing broker dealer ("DE Route") have established to manage the potential financial, regulatory and other risks associated with providing Members access to the Exchange and to external market centers, respectively.<sup>13</sup> Thus, even if an order were to satisfy the risk controls established by a Member via the Service, it is still possible that the Exchange's own risk controls could either reject the order from entry to the Exchange or cancel the order back to the Member and/or Sponsored Participant if the order could not be routed as a result of the separate risk controls that DE Route has established to satisfy its own compliance obligations under the Market Access Rule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</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. Moreover, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In its release adopting the Market Access Rule, the Commission stated that the rule "is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system."<sup>16</sup> As noted above, the obligation to comply with the Market Access Rule falls squarely on broker-dealers that have and provide market access. The Service is designed to provide certain functionality to assist broker-dealers that are Members of the Exchange to satisfy their compliance obligations under the Market Access Rule (although not necessarily to the exclusion of other appropriate tools and services that are also available to Members). In this regard, the Exchange believes that the Service is consistent with the objectives in the Act of protecting investors and the public interest, promoting just and equitable principles of trade, and preventing fraudulent and manipulative acts and practices, as it would contribute to helping Members further the objectives of the Market Access Rule.

The proposed rule change is also consistent with the Exchange's responsibilities under the Act as a self-regulatory organization, as the Exchange is not purporting to offer a tool that would necessarily be the exclusive means by which Members could satisfy their obligations under the Market Access Rule, nor is the Exchange requiring its Members to use the Service. Indeed, the Exchange represents that it will not discriminate against any Member that elects not to use the Service. In that regard, the Service is not designed to permit unfair discrimination between Members.

Finally, the Exchange believes that the proposed rule change would foster competition by providing another option in the efficient risk management of trading on the Exchange, in a manner similar to those which are currently being provided by competitors of the Exchange.<sup>17</sup>

<sup>5</sup> As defined in EDGX Rule 1.5(n).

<sup>6</sup> The Exchange is not proposing to charge a fee for the Service at this time, although it is possible that the Exchange might submit a fee filing in respect of the Service at some later point in time. The Service would be made available to Members upon request.

<sup>7</sup> A "Sponsored Participant" is a person who has entered into a sponsorship arrangement with a Sponsoring Member. EDGX Rule 1.5(z). A "Sponsoring Member", in turn, is a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions executed on or through the Exchange. EDGX Rule 1.5(aa).

<sup>8</sup> As defined in EDGX Rule 1.5(cc).

<sup>9</sup> These features are dynamic and are likely to evolve over time.

<sup>10</sup> The Financial Information eXchange ("FIX") Protocol is a series of messaging specifications for the electronic communication of trade-related messages. A Drop Copy is a trade execution report or message that is sent back to a trading participant's system using the FIX protocol.

<sup>11</sup> Edge XPRS is a high-performance order entry protocol.

<sup>12</sup> EDGX Rule 11.3 addresses access by Members and Sponsored Participants to the facilities of the Exchange.

<sup>13</sup> See Direct Edge Regulatory Notice 11-01 (November 30, 2011).

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See Securities Exchange Act Release No. 69792 [sic] at 69792.

<sup>17</sup> See Securities Exchange Act Release No. 60236 (July 2, 2009), 74 FR 34068 (July 14, 2009) (SR-BATS-2009-19) (Notice of Filing and Immediate Effectiveness of BATS Exchange, Inc.'s Sponsored Access Risk Management Tool). See also Securities Exchange Act Release No. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR-NYSE-2008-101) (Approval of New York Stock Exchange LLC's Risk Management Gateway).

### *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.

### *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>18</sup> and Rule 19b-4(f)(6)<sup>19</sup> thereunder.

The Exchange has asked the Commission to accelerate the 30-day operative delay.<sup>20</sup> The Commission finds that accelerating the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin offering the Service immediately to its Members. The Commission notes that other exchanges currently provide services similar to the Service proposed by EDGX.<sup>21</sup> Accordingly, the Commission designates the proposal operative upon filing.<sup>22</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-EDGX-2012-21 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-EDGX-2012-21. 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-EDGX-2012-21 and should be submitted on or before July 23, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-16136 Filed 6-29-12; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67265; File No. SR-EDGA-2012-23]

### **Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to New Market Access Risk Management Service, EdgeRisk Controls<sup>SM</sup>**

June 26, 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 19, 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 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**

EDGA Exchange, Inc. ("EDGA" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to establish a new market access risk management service, called EdgeRisk Controls<sup>SM</sup> (the "Service").

#### **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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

<sup>19</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.

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> See *supra* note 17 and accompanying text.

<sup>22</sup> For purposes only of accelerating the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).