

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67909; File No. SR-EDGA-2012-42]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 13.9

September 21, 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 September 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

The Exchange is filing with the Commission a proposed rule change to amend Rule 13.9, which provides a new market data product to Members<sup>3</sup> and non-Members of the Exchange. The text of the proposed rule change is available on the Exchange's 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 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, Proposed Rule Change

##### 1. Purpose

In SR-EDGA-2012-38 (the "Filing"),<sup>4</sup> the Exchange introduced a new market data product, Edge Routed Liquidity Report ("Edge Routed Liquidity Report" or the "Service") to Members and non-Members of the Exchange (collectively referred to as "Subscribers"). The Edge Routed Liquidity Report is a data feed that contains historical order information for orders routed to away destinations by the Exchange. The Filing stated that Edge Routed Liquidity Report is offered as either a standard report (the "Standard Report") or a premium report (the "Premium Report") (the Standard Report and the Premium Report shall be collectively referred to as the "Reports").

The purpose of this proposed rule change is to amend Rule 13.9 to provide additional information regarding the features of the Standard Report and the Premium Report. The Filing noted that both the Standard Report and the Premium Report provide a view of all marketable orders that are routed to away destinations by the Exchange. The Reports are available to the Subscribers on the morning of the following trading day (T + 1) and include limit price, routed quantity, symbol, side (bid/offer), time of routing, and the National Best Bid and Offer (NBBO) at the time of routing.

However, [the] Premium Report also identifies various categories of routing destinations. First, the Premium Report identifies whether the routing destination is either directed to a destination that is not an exchange ("Non-Exchange Destination") or directed to another exchange. If the order is routed to a Non-Exchange Destination, the Premium Report will then also specify one of the following Non-Exchange Destination categories: Regular, Fast, Superfast and Midpoint (collectively, the "Categories"). The Category is determined by the applicable routing strategy associated with the relevant order, based on responsiveness of the destination (i.e. latency), number of destinations, and/or type of execution (i.e. midpoint). For example, a routing strategy that leverages many dark pools for low-cost, low impact executions, which takes a

greater amount of time to fill an order may be categorized as "Regular" in the Premium Report, whereas a destination specific strategy that has fewer Non-Exchange Destinations and responds more quickly may be categorized as "Superfast" in the Premium Report. Notwithstanding the foregoing, the Premium Report will not identify the specific destination.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives 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, which requires, among other things, that the Exchange's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are 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, the Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of an additional market data feed, which will provide market participants with the opportunity to obtain additional data in furtherance of their investment decisions. The proposed rule change will contribute to providing such additional information and afford Subscribers transparency by categorizing routed liquidity to various Non-Exchange Destinations.

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

The Exchange 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.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

<sup>13</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 that has been admitted to membership in the Exchange.

<sup>4</sup> Securities Exchange Act Release No. 67765 (August 31, 2012), 77 FR 55248 (September 7, 2012) (SR-EDGA-2012-38).

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

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

unsolicited written comments from its Members or other interested parties.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) <sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii) <sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that waiver of these requirements will allow the Exchange to offer the Edge Routed Liquidity Report, with the revised and clarified distinction of the features available in each of the Reports, on or about the Filing's operative date. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately provide additional information necessary for the operation of the Exchange's rules regarding the Edge Routed Liquidity Report. For this reason, the Commission designates the proposed rule change to be operative upon the operative date of the Filing.<sup>11</sup>

At any time within 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-2012-42 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-2012-42. 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-EDGA-2012-42 and should be submitted on or before October 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67907; File No. SR-NYSEMKY-2012-45]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 1203(a) and 1205(b) of the NYSE MKT Company Guide ("Company Guide") To Increase the Fees Applicable to Issuers Requesting Review of a Determination To Limit or Prohibit the Continued Listing of Their Securities on the Exchange

September 21, 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 September 7, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") 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 Sections 1203(a) and 1205(b) of the NYSE MKT Company Guide ("Company Guide") to increase the fees applicable to issuers requesting review of a determination to limit or prohibit the continued listing of their securities on the Exchange. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>12</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>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). 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>10</sup> *Id.*

<sup>11</sup> For the 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).