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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67711; File No. SR-EDGX-2012-24)

August 22, 2012

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend EDGX Rules Regarding Market Access

I. Introduction

On June 22, 2012, EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend EDGX rules regarding market access for Sponsored Participants.³ The proposed rule change was published for comment in the Federal Register on July 9, 2012.⁴ The Commission received no comment letters regarding the proposed rule change. On July 31, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ EDGX Rule 1.5(z) defines “Sponsored Participant” as “a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.” As discussed below, the Exchange proposes to amend the definition of Sponsored Participant as part of the instant proposed rule change.

⁴ See Securities Exchange Act Release No. 67331 (July 2, 2012), 77 FR 40392 (“Notice”).

⁵ In Amendment No. 1, the Exchange made a technical change to Rule 1.5(z) in Exhibit 5. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment.

II. Description of the Proposal

EDGX Rule 11.3(b) sets forth the requirements for Sponsored Participants to obtain authorized access to the Exchange's System.⁶ A Sponsored Participant may obtain authorized access by entering into and maintaining customer agreements with one or more Sponsoring Members⁷ through which the Sponsored Participant may trade on the Exchange's System.⁸ The customer agreements must incorporate the provisions of Rule 11.3(b)(2).⁹ In addition, the Sponsoring Member must provide EDGX with a written statement identifying each Sponsored Participant by name and acknowledging its responsibility for the orders, executions, and actions of the Sponsored Participants.¹⁰

EDGX proposes to amend Rule 1.5(z), defining Sponsored Participant, and Rule 11.3(b), related to access by Sponsored Participants, to clarify the obligations of Sponsoring Members and Sponsored Participants. EDGX proposes to define Sponsored Participant as "a person which has entered into an arrangement with one or more Sponsoring Members whereby such person obtains authorized access to the System in accordance with Rule 11.3."¹¹ In addition, EDGX proposes to delete certain contractual provisions under Rule 11.3(b) that EDGX believes are no longer necessary given the obligations applicable to Sponsoring Members under Rule 15c3-5

⁶ EDGX Rule 1.5(cc) defines "System" as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

⁷ EDGX Rule 1.5(aa) defines "Sponsoring Member" as "a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System."

⁸ See EDGX Rule 11.3(b).

⁹ See Notice, supra note 4, at 40393.

¹⁰ See EDGX Rule 11.3(b)(3).

¹¹ See EDGX Rule 1.5(z); Amendment No. 1 at 4.

under the Act (“Market Access Rule”).¹² The Exchange also proposes to amend Rule 11.3(a) to require that only Members,¹³ and not Users¹⁴ (which includes Members as well as their Sponsored Participants), enter into agreements with the Exchange to obtain authorized access to EDGX’s System.¹⁵ Sponsored Participants, in turn, must enter into and maintain sponsored or direct access arrangements with one or more Sponsoring Members establishing the proper relationship(s) and account(s) through which the Sponsored Participants may trade on the Exchange’s System.¹⁶

EDGX also proposes amendments to maintain transparency into who is accessing the Exchange’s System.¹⁷ Sponsoring Members will need to maintain a list of Sponsored Participants authorized to access the Exchange’s System pursuant to Rule 11.3, update that list as necessary, and provide the list to the Exchange upon request.¹⁸ In addition, the Exchange

¹² 17 CFR 240.15c3-5. See Notice, supra note 4, at 40393. EDGX proposes to delete the provisions in Rule 11.3(b)(2)(A)–(I), the second sentence of Rule 11.3(b)(1), and Rule 11.3(b)(3).

¹³ EDGX Rule 1.5(n) defines “Member” as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.”

¹⁴ EDGX Rule 1.5(ee) defines “User” as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.”

¹⁵ See EDGX Rule 11.3(a).

¹⁶ See EDGX Rule 11.3(b)(1).

¹⁷ See Notice, supra note 4, at 40394.

¹⁸ See EDGX Rule 11.3(b)(2). EDGX is retaining the requirement in Rule 11.4(a) that all Members maintain a list of Authorized Traders who may obtain access to the System on behalf of the Member or the Member’s Sponsored Participants, and provide that list to the Exchange upon request. See Notice, supra note 4, at 40393.

proposes to require that Sponsoring Members shall comply with all requirements of Rule 15c3-5 under the Act¹⁹ with regard to market access arrangements with Sponsored Participants.²⁰

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²² which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 Commission finds that the instant proposed rule change is consistent with the Act. The Commission notes that the Exchange believes the proposal should serve to eliminate potential confusion regarding the obligations of Sponsoring Members and Sponsored Participants under Exchange rules. In addition, the Commission notes that the Exchange proposes to require Sponsoring Members to comply with Rule 15c3-5 under the Act²³ with regard to market access

¹⁹ See 17 CFR 240.15c3-5. Rule 15c3-5 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, or the stability of the financial system. See Risk Management Controls for Brokers or Dealers with Market Access, Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) ("Market Access Rule Adopting Release").

²⁰ See EDGX Rule 11.3(b)(3).

²¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

²³ 17 CFR 240.15c3-5.

arrangements with Sponsored Participants.²⁴ In this regard, the Commission notes that although the proposal relates to obligations of Sponsoring Members and Sponsored Participants under the Exchange’s rules, the financial and regulatory risk management controls and supervisory procedures required by Rule 15c3-5 under the Act²⁵ apply broadly to all forms of market access by broker-dealers that are exchange members or alternative trading system (“ATS”) subscribers, including sponsored access, direct market access, and more traditional agency brokerage arrangements with customers, as well as proprietary trading.²⁶ The application of appropriate risk management controls and supervisory procedures required by Rule 15c3-5 under the Act²⁷ is critically important to maintaining a robust market infrastructure supporting the protection of investors, investor confidence, and fair, orderly, and efficient markets for all participants.

²⁴ See EDGX Rule 11.3(b)(3).

²⁵ 17 CFR 240.15c3-5.

²⁶ See Market Access Rule Adopting Release, supra note 19, 75 FR at 69798.

²⁷ 17 CFR 240.15c3-5.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-EDGX-2012-24), as modified by Amendment No. 1 thereto, is approved.

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

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Deputy Secretary

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²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).