



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73892; File No. SR-EDGA-2014-33)

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Convert Direct Edge, Inc., the Parent Company of EDGA Exchange, Inc., from a Delaware Corporation to a Delaware Limited Liability Company

December 19, 2014

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 12, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. 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 filed a proposal to: (i) convert Direct Edge, Inc. (“DE”) from a Delaware corporation to a Delaware limited liability company (the “Conversion”), and, in connection therewith, change the name of DE from “Direct Edge, Inc.” to “Direct Edge LLC,” and (ii) amend the Third Amended and Restated Bylaws of the Exchange (the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

“Exchange Bylaws”) to reflect the name change of DE as the Exchange’s sole stockholder.

The text of the proposed rule change is available at the Exchange’s website at <http://www.directedge.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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 parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission’s approval of the Conversion, the adoption of the Organizational Documents, and the Amended Exchange Bylaws. The Conversion is proposed as a means to simplify the administration associated with the Exchange’s overall corporate structure. The name change from “Direct Edge, Inc.” to “Direct Edge LLC” reflected in the Amended Exchange Bylaws is a non-substantive change. Other than converting DE from a corporation to a limited liability company and changing the name of DE from “Direct Edge, Inc.” to “Direct Edge LLC” in the Amended Exchange Bylaws, no changes to the ownership or structure of the Exchange, DE Holdings, or the other entities included in the

Exchange's overall corporate structure are proposed.⁵ The proposed Organizational Documents are consistent in form and scope with the most recent governing documents that were approved by the Commission.⁶

There are no new regulatory issues implicated in this proposal. Other than as described herein and set forth in the attached Exhibits 5A through 5C, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members⁷) in the manner currently conducted, and will not make any changes to its regulated activities in connection with the Conversion. The Exchange is not proposing any amendments to its trading and regulatory rules at this time. If the Exchange determines to make any such changes, it will seek the approval of the Commission to the extent required by the Act, and the Commission's rules thereunder, and the Rules of the Exchange.

1. Current Corporate Structures

The Exchange and EDGX Exchange, Inc. ("EDGX", and together with the

⁵ The Exchange notes that the Third Amended and Restated Bylaws of EDGX Exchange, Inc. will also be amended and restated to reflect the name change of DE as the sole stockholder of EDGX Exchange, Inc.

⁶ See Securities Exchange Act Release Nos. 60651 (September 11, 2009), 74 FR 47827 (Notice of Filing of Applications, as Amended, for Registration as National Securities Exchanges under section 6 of the Securities Exchange Act of 1934) (including the EDGX and EDGA Form 1 Applications and Exhibits); and 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (In the Matter of the Applications of EDGX Exchange, Inc. and EDGA Exchange, Inc. for Registration as National Securities Exchanges); and Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGA-2013-34; SR-EDGX-2013-43).

⁷ The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to the membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

Exchange, the “DE Exchanges”), are each Delaware corporations that are national securities exchanges registered with the Commission pursuant to section 6(a) of the Act.⁸ Each DE Exchange is a direct, wholly owned subsidiary of DE, a Delaware corporation. DE, originally formed as a Delaware corporation on July 22, 2010, is a direct, wholly owned subsidiary of DE Holdings. In addition, DE Holdings owns 100 percent of the equity interest in Direct Edge ECN LLC d/b/a DE Route, a Delaware limited liability company and the routing broker-dealer for the DE Exchanges. BATS Global Markets, Inc., a Delaware corporation (“BGM”), owns 100 percent of the equity interest in DE Holdings, and is the ultimate parent entity in the Exchange’s overall corporate structure.

2. The Conversion

On December 9, 2014, the Board of Directors of DE approved the Conversion and Organizational Documents on December 9 2014, and DE Holdings approved the Conversion and Organizational Documents of DE on December 9, 2014. Pursuant to the Conversion, DE would be converted from a Delaware corporation to a Delaware limited liability company. BGM will continue to own 100 percent of the equity interests in DE Holdings, and DE Holdings will continue to own 100 percent of the equity interest in DE, which in turn, will continue to own 100 percent of the equity interest in each DE Exchange.

3. Adoption of Certificate and Operating Agreement

The Exchange proposes that DE adopt a new Certificate and Operating Agreement to replace the existing Restated Certificate of Incorporation of DE and the existing Amended and Restated Bylaws of DE. Each of the proposed Certificate and

⁸ 15 U.S.C. 78f(a).

Operating Agreement are modeled on, and are substantially similar to, the current certificate of formation and operating agreement, respectively, of DE Holdings, which is similarly situated as an intermediate holding company. The Commission has previously found the DE Holdings certificate of formation and operating agreement to be consistent with the Act.⁹ Each of the regulatory provisions described below, which the Exchange proposes to adopt within the Operating Agreement of DE, are also consistent with current provisions set forth in the existing Restated Certificate of Incorporation of DE and the existing Amended and Restated Bylaws of DE.

Although DE will not carry out any regulatory functions, the Exchange notes that its activities with respect to the operation of the DE Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each DE Exchange. As further described below, the Operating Agreement therefore will include provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of sections 6(b)¹⁰ and 19(g)¹¹ of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.

a. Certificate of Formation

In connection with the Conversion, the Exchange proposes that DE adopt a new Certificate, as set forth in Exhibit 5A, to replace the existing Restated Certificate of Incorporation of DE. The proposed Certificate includes the following provisions required

⁹ See supra note 6.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78s(g).

under Delaware law:

- The full legal name of DE as “Direct Edge LLC”; and
- The name and address of DE’s registered office in the State of Delaware.

b. Operating Agreement

In connection with the Conversion, the Exchange proposes that DE adopt a new Operating Agreement, as set forth in Exhibit 5B, to replace the existing Amended and Restated Bylaws of DE. The proposed Operating Agreement contains several provisions designed to protect the independence of the self-regulatory functions of the DE Exchanges.

The Operating Agreement would require DE Holdings and DE’s officers, employees and agents to give due regard to the preservation of the independence of the self-regulatory function of the Exchange, as well as to its obligations to investors and the general public, and not interfere with the effectuation of any decisions by the Exchange Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act. The Operating Agreement would require that DE comply with the U.S. federal securities laws and rules and regulations thereunder and cooperate with the Commission and the Exchange pursuant to and to the extent of their respective regulatory authority. Pursuant to the Operating Agreement, DE’s officers, employees and agents, by virtue of their acceptance of such positions, shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate with the Commission and the Exchange in respect of the Commission’s oversight responsibilities regarding the Exchange and its self-regulatory functions, and

DE will take reasonable steps to cause its officers, employees and agents to so cooperate.

Furthermore, DE and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and each DE Exchange, as applicable, for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of a DE Exchange.

The Operating Agreement would also contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DE. Pursuant to the Operating Agreement, the books, records, premises, officers, agents, and employees of DE are deemed to be the books, records, premises, officers, agents and employees of the Exchange to the extent they are related to the operation or administration of the Exchange. In addition, for as long as DE controls the Exchange, DE's books and records shall be subject at all times to inspection and copying by the Commission and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.

The Operating Agreement also would provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory functions of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchanges that shall come into the possession of DE shall (i) be retained in confidence by DE Holdings, DE, and DE's officers, employees and agents, and (ii) not be used for any non-regulatory purposes. The Operating Agreement provides, however, that the foregoing shall not limit or impede the rights of the Commission or the Exchange to access and examine such

confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit or impede the ability of DE Holdings or DE's officers, employees or agents to disclose such confidential information to the Commission or the Exchange.

In addition, the Operating Agreement would provide that for so long as DE directly or indirectly controls a registered national securities exchange, before any amendment to or repeal of any provision of the Operating Agreement may be effective, the changes must be submitted to the Board of Directors of each such exchange, and if the change is required to be filed with or filed with and approved by the Commission before the change may be effective under section 19 of the Act and the rules promulgated thereunder,¹² then such proposed change shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

The Operating Agreement identifies DE Holdings as the sole Member of DE.¹³ The identification of the sole Member of DE is designed to assure that any change to the indirect ownership or control of the DE Exchanges occurs through a change in the ownership or control of DE Holdings, or in accordance with the rule filing process described above. If the change of control occurs through a change in the ownership or control of DE Holdings, any purported change of such ownership or control would need to comply with DE Holdings' organizational documents.

¹² 15 U.S.C. 78s(b).

¹³ See Operating Agreement, Art. II, section 2.01.

4. Amended Exchange Bylaws

The Exchange proposes to amend the Exchange Bylaws, as set forth in Exhibit 5C, to change the name of its sole stockholder from “Direct Edge, Inc.” to “Direct Edge LLC”. The name change from “Direct Edge, Inc.” to “Direct Edge LLC” as reflected in the Amended Exchange Bylaws is a non-substantive change. No other changes to the ownership or structure of the Exchange have taken place.

2. Statutory Basis

The Exchange believes that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.¹⁴ In particular, the proposal is consistent with section 6(b)(1) of the Act¹⁵ in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules of the Exchange. The Proposed Rule Change is designed to effect the Conversion while ensuring that the Exchange will continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. In particular, the Proposed Rule Change includes in the Operating Agreement various provisions intended to protect and maintain the integrity of the self-regulatory functions of the Exchange. For example, the Operating Agreement, as described above, is drafted to preserve the independence of the

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(1).

Exchange's self-regulatory function and ensure that the Exchange is able to obtain information it needs from the specified parties to detect and deter any fraudulent and manipulative acts in its marketplace and carry out their regulatory responsibilities under the Act. Moreover, with the Proposed Rule Change, the Commission will continue to have regulatory authority¹⁶ over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect parents with respect to activities related to the Exchange. As a result, the Proposed Rule Change will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities and their directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that the Proposed Rule Change furthers the objectives of section 6(b)(5) of the Act¹⁷ because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that 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 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. Furthermore, the Exchange is not proposing any changes to its regulated activities in connection with the Conversion; the Exchange will operate and regulate its

¹⁶ See, e.g., Operating Agreement, Article X, section 10.03.

¹⁷ 15 U.S.C. 78f(b)(5).

Members in the same manner upon consummation of the Conversion as it does today. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

In addition, the Proposed Rule Change provides transparency and certainty, and promotes efficiency, with respect to the governance and corporate structure of the Exchange and its direct and indirect parent companies. The Exchange believes that these additional changes, among other things, will remove administrative impediments to the governance of the Exchange. By simplifying the governance structure in this way, the Proposed Rule Change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

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

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members. Furthermore, the proposed Conversion is not a competitive proposal, but rather is intended to add efficiency with respect to the governance process for the Exchange and its affiliates.

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

The Exchange has not solicited or 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: (1) significantly affect the protection of investors or the public interest; (2) 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) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to effect the Conversion upon filing with the Secretary of State of the State of Delaware and, according to the Exchange, simplify the administration associated with the

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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 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 met this requirement.

Exchange's overall corporate structure immediately.²⁰ Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-EDGA-2014-33 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGA-2014-33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission will post all comments on the Commission's Internet website (<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 website 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-2014-33, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Brent J. Fields,
Secretary.

[FR Doc. 2014-30273 Filed 12/24/2014 at 8:45 am; Publication Date: 12/29/2014]

²¹ 17 CFR 200.30-3(a)(12).