This document is scheduled to be published in the
Federal Register on 07/01/2013 and available online at
http://federalregister.gov/a/2013-15661, and on **FDsys.gov**

8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69852; File No. SR-EDGX-2013-20)

June 25, 2013

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule regarding Retail Orders

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 June 13, 2013, 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 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 Footnote 4 of the Exchange's fee schedule regarding Retail Orders. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet website at 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 self-regulatory organization 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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-EDGX-2012-47,[3] the Exchange introduced new flags ZA (Retail Order, adds liquidity) and ZR (Retail Order, removes liquidity) and appended to each flag Footnote 4 to the Exchange's fee schedule. Footnote 4 defined a "Retail Order," provided an attestation requirement for Members[4] to comply with when sending Retail Orders to the Exchange, and allowed Members to designate orders as Retail Orders on an order-by-order basis. In SR-EDGX-2012-48,[5] the Exchange subsequently expanded Members' ability to send the Exchange Retail Orders by designating certain of their FIX ports at the Exchange as "Retail Order Ports." The attestation requirement, as described in SR-EDGX-2012-47,[6] continues to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports. In SR-EDGX-2013-13, the Exchange added riskless principal orders to the types of orders that may qualify as Retail Orders.[7]

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3 See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

4 As defined in Exchange Rule 1.5(n).

5 See Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR-EDGX-2012-48).

6 See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

7 See Securities Exchange Act Release No. 69378 (April 15, 2013), 77 FR 23617 (April 19, 2013) (SR-EDGX-2013-13). Footnote 4 on the Exchange's fee schedule currently defines a Retail Order as: "(i) an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized

Proposed Amendment to Retail Attestation

In SR-EDGX-2012-47,[8] the Exchange stated requirements for Members that represent Retail Orders from another broker-dealer customer. The requirements state that "[t]he Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements."[9]

The Exchange proposes to codify in Footnote 4 of its fee schedule similar language, but delete the requirement that the form be acceptable to the Exchange. With the deletion of this requirement, the proposed language to be added to Footnote 4 of the Exchange's fee schedule still requires Members to obtain an annual written representation if they represent Retail Orders from another broker-dealer customer and Footnote 4 provides criteria that all Members who submit Retail Orders must satisfy.[10] In addition, Members must ensure that their broker-dealer

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methodology." See EDGX Fee Schedule, http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.

8 See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

9 The Exchange notes that it has amended its attestation form for Members designating Retail Orders to add this requirement. The Exchange also notes that the Exchange's regulatory service provider, on behalf of the Exchange, will review Members' compliance with the attestation requirement through an exam based review of a Member's internal controls.

10 The Exchange notes that currently Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a

customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with their supervisory procedure requirement, as outlined in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA was to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the Exchange.[11] Furthermore, the Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

The Exchange notes that the above language regarding Members' requirements with respect to Retail Orders sent to them from another broker-dealer was previously filed with the Commission, albeit containing the requirement that the form be acceptable to the Exchange.[12] The present filing is merely codifying such language in the Exchange's fee schedule, with the

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"Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

[11] As described in Chapter VIII of the Exchange's Rules.

[12] See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

exception of the requirement that the form be acceptable to the Exchange. In addition, the Exchange notes that other market centers have codified or are in the process of codifying similar language.[13]

Proposed Amendment to Definition of Retail Order

In addition, Footnote 4 to the Exchange's fee schedule currently states that "Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a 'Retail Order' complies with the [Retail Order] requirements."[14] The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from utilizing Retail Orders. In particular, the Exchange understands that some Members wishing to utilize Retail Orders represent both "Retail Orders", as defined in Footnote 4 to the Exchange's fee schedule, as well as other agency flow that may not meet the strict definition of a "Retail Order." The Exchange further understands that limitations in order management systems and routing networks used by such Members may make it infeasible for them to isolate 100% of their Retail Orders from other agency, non-Retail Order flow that they would otherwise send to the Exchange as Retail Orders. Unable to make the categorical attestation required by the current language in Footnote 4 to the Exchange's fee

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13 The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_form_nov_2012.pdf.

14 See EDGX, EDGX Fee Schedule, http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.

schedule, some Members have chosen not to utilize Retail Orders, notwithstanding that substantially all order flow from such Members would qualify as Retail Orders. This limitation has the effect of preventing such Members' retail customers from benefiting from the rebate offered to Retail Orders through Flags ZA ($0.0032 per share rebate) and the ability to qualify for a Retail Order Tier of $0.0034 per share, provided certain conditions are met.[15]

Accordingly, in order to accommodate these system limitations and expand the access of Retail Orders to more Members, the Exchange is proposing a de minimis relaxation of the attestation requirement in Footnote 4 of its fee schedule. Therefore, as proposed, Members would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under the existing attestation requirement. Therefore, the Exchange proposes to amend Footnote 4 to provide that a Member may attest that "substantially all" of the orders it designates as Retail Orders qualify as Retail Orders, replacing the requirement that the Member must attest that "every order" qualifies as a Retail Order. The Exchange proposes to amend Footnote 4 to its fee schedule to state that "Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that <u>substantially all orders</u> designated by the Member as a 'Retail Order' comply with the above requirements." (emphasis added).

The Exchange will issue a Regulatory Notice to make clear that the "substantially all" language is meant to permit the presence of only isolated and de minimus quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to

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[15] Members will be provided a rebate of $0.0034 per share if they add an average daily volume of Retail Orders (Flag ZA) that is 0.10% or more of the TCV on a daily basis, measured monthly.

systems limitations. In this regard, a Member would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because it would communicate to market participants that significant safeguards are in place to protect the integrity of the retail order flow and codify that it is the Member's duty to ensure its supervisory procedures are reasonably designed to assure designated Retail Orders it receives from a broker-dealer customer meet the definition of a Retail Order. As part of this duty, a Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange,

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16 FINRA, on behalf of the Exchange, will review a Member's compliance with these requirements.

17 15 U.S.C. 78f.

18 15 U.S.C. 78f(b)(5).

and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. The Exchange notes that this duty was communicated in a previous filing submitted to the Commission by the Exchange, and that the purpose of this filing is to increase transparency by codifying such duty in the Exchange's fee schedule, with the exception of the requirement that the form be acceptable to the Exchange.[19] The Exchange's elimination of the requirement that the form be acceptable to the Exchange provides Members additional flexibility to structure their written supervisory procedures in a way that best suits each individual Member.[20] The proposed language to be added to Footnote 4 of the Exchange's fee schedule defines the criteria for Members to meet to comply with the "Retail Order" definition if they represent Retail Orders from another broker-dealer customer. In addition, Footnote 4 provides criteria for all Members to meet to satisfy the "Retail Order" definition.[21] Subsequent to the proposed rule change, the Exchange notes that the text of Footnote 4 regarding the attestation requirement would read as follows:

> If the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation from each broker-dealer customer

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19 See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

20 The Exchange notes that Members will continue to be required to submit to the Exchange an attestation in a form acceptable to the Exchange regarding their own retail order flow.

21 The Exchange notes that Members must continue to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order[sic] designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with the supervisory procedure requirement also in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, FINRA, on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA were to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the Exchange.[22] The Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

Such procedures are designed to promote just and equitable principles of trade and removes impediments to and perfect the mechanism of a free and open market and a national

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[22] As described in Chapter VIII of the Exchange's Rules.

market system because they provide a backstop that would ensure the integrity of the retail order flow sent to the Exchange.

The Exchange believes that the proposed change would protect investors and the public interest by making more transparent the requirements for Members surrounding broker-dealer customers of Members that plan to utilize Retail Orders and codify the supervisory duty of the Member to ensure such customers abide by the requirements of Retail Orders, thus promoting the integrity of the retail order flow sent to the Exchange and acting as a deterrent to prevent potential abuse of the Retail Order designation. Accordingly, the proposed amendment to the requirements for Retail Orders would contribute to investors' confidence in the fairness of their transactions, prompting investors to send more retail order flow to the Exchange, which would subsequently benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery and promoting market transparency.

The Exchange believes that its proposal to amend Footnote 4 of its fee schedule to provide that a Member may attest that "substantially all" of the orders it submits to the Exchange qualify as Retail Orders is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the Member to attest that "substantially all" of its orders will qualify as Retail Orders. This de minimis relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted as Retail Orders would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow Members, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still utilize Retail Orders. By removing impediments to the characterizing of orders as Retail Orders, the proposed change would permit expanded access of Members and their retail customers to the potential rebate and tiered pricing offered to Retail Orders (Flag ZA and the Retail Tier in Footnote 4 of the Exchange's fee schedule).

In addition, the Exchange notes that the proposed amendment will render the Exchange's definition closer to the definitions utilized by the Exchange's competitors.[23]

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed amendment to Footnote 4 of the Exchange's fee schedule would not burden intramarket competition because the ability to submit Retail Orders would continue to be open to all Members that wish to send Retail Orders to the Exchange, including those that represent Retail Orders from another broker-dealer customer, requiring an attestation, as described above.

The Exchange believes that the proposed amendment would not burden intermarket competition because the proposed amendment is similar to that utilized by other market

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[23] See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

centers.[24] This amendment would increase transparency and promote the integrity of the retail order flow sent to the Exchange, which would stimulate Members to send more retail order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow.

The Exchange does not believe that the proposed amendment to the definition of Retail Order will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment, by increasing the level of participation of Retail Orders, would increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of allowing Retail Orders on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of exchanges to encompass practices currently allowed on non-exchange venues.

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: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on

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[24] The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_form_nov_2012.pdf.

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 Act[25] and Rule 19b-4(f)(6) thereunder.[26]

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 because the proposed rule change is a limited and sufficiently defined modification to the current attestation requirement or provides additional transparency to the Exchange's Members regarding the usage of Retail Orders on the Exchange.[27] 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.

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[25] 15 U.S.C. 78s(b)(3)(A).

[26] 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.

[27] 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).

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-EDGX-2013-20 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-2013-20. 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 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-EDGX-2013-20 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.[28]

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2013-15661 Filed 06/28/2013 at 8:45 am; Publication Date: 07/01/2013]

[28] 17 CFR 200.30-3(a)(12).