

necessary or appropriate in furtherance of the purposes of the Act. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ Because the 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 prior to 30 days from the date on which it was filed, 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the

protection of investors and the public interest.

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. Please include File Number SR-NYSE-Arca-2012-89 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.

All submissions should refer to File Number SR-NYSE-Arca-2012-89. 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 such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-NYSE-Arca-2012-89 and should be submitted on or before September 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67726; File No. SR-EDGA-2012-28]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Approving a Proposed Rule Change To Amend EDGA Rules To Add the Route Peg Order

August 24, 2012.

I. Introduction

On June 26, 2012, EDGA Exchange, Inc. ("Exchange") 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 Exchange Rule 11.5 to provide an additional order type, the Route Peg Order. In addition, the Exchange proposed to amend Exchange Rule 11.8 to describe the priority of the Route Peg Order relative to other orders on the EDGA Book. The proposed rule change was published for comment in the **Federal Register** on July 5, 2012.³ The Commission received no comment letters on the proposed rule change. On August 16, 2012, the Commission extended to October 3, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁴ This order approves the proposed rule change.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67291 (June 28, 2012), 77 FR 39785 ("Notice").

⁴ See Securities Exchange Act Release No. 67677 (August 16, 2012), 77 FR 50740 (August 22, 2012).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

II. Description of the Proposed Rule Change

The Exchange proposed to add a new order type, the Route Peg Order.⁵ A Route Peg Order would be a non-displayed limit order eligible for execution at the national best bid (the “NBB”) for Route Peg Orders to buy, and at the national best offer (the “NBO”)⁶ for Route Peg Orders to sell, against routeable orders that are equal to or less than the size of the Route Peg Order. The Route Peg Order would be a passive, resting order that could only provide liquidity. The Route Peg Order would not be permitted to take liquidity. Incoming orders that are designated as eligible for routing would be able to interact with Route Peg Orders. The incoming order would first be matched according to the price/time priority rules established by Exchange Rule 11.8(a)(2)(A)–(C). If any portion of the incoming order remained unexecuted only then would such order be eligible to execute against Route Peg Orders.⁷ The Route Peg Order is intended to provide liquidity in the event that a marketable order would otherwise route to another destination. In addition, a Route Peg Order would only trade with orders that are equal to or smaller in quantity than the original order quantity of the Route Peg Order.⁸ If a Route Peg Order were partially executed, it would be assigned a new time priority and new timestamp after each partial execution until either the remaining size is exhausted or the Route Peg Order is cancelled by the Member.⁹

⁵ The Exchange proposed to amend Exchange Rule 11.5(c) to add a new subparagraph (14) describing the Route Peg Order. See Notice, *supra* note 3 at 39785.

⁶ Together, the NBO and NBB are referred to as the “NBBO.”

⁷ The Exchange proposed to codify the priority of the Route Peg Order in proposed new paragraph (a)(2)(D) of Exchange Rule 11.8. See Notice, *supra* note 3 at 39785 n. 5.

⁸ If a Route Peg Order were partially executed, it would be able to execute against orders that were larger than the remaining balance of the Route Peg Order, but those orders would still need to be equal to or smaller than the original order quantity of the Route Peg Order. The Exchange stated that it elected to design the system in this manner to avoid the possibility of a single block-sized order potentially clearing all of the liquidity posted on the Exchange attributable to Route Peg Orders. *Id.* at 39786.

⁹ The Exchange proposed to codify this principle in new subparagraph (a)(7) of Exchange Rule 11.8. The Exchange also proposes to add an exception for the Route Peg Order in Exchange Rule 11.8(a)(5), which otherwise would require that a partially executed order retain priority at the same limit price. The Exchange asserted that assigning a new timestamp after each partial execution would allow for a rotating priority of execution for Users (as defined in Exchange Rule 1.5(ee)) who place Route Peg Orders. *Id.* at 39786 n. 6.

Route Peg Orders would be able to be entered, cancelled and cancelled/replaced prior to and during Regular Trading Hours.¹⁰ Route Peg Orders would be eligible for execution in a given security during Regular Trading Hours, except that, even after the commencement of Regular Trading Hours, Route Peg Orders would not be eligible for execution (1) in the opening cross, and (2) until such time that regular session orders in that security could be posted to the EDGA Book.¹¹ A Route Peg Order would not execute at a price that is inferior to a Protected Quotation,¹² and would not be permitted to execute if the NBBO were locked or crossed. Any and all remaining, unexecuted Route Peg Orders would be cancelled at the conclusion of Regular Trading Hours.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be designed 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that the Route Peg Order is designed to incentivize Users¹⁵ to place greater liquidity at the NBBO, thereby promoting more favorable executions for the benefit of public customers. According to the Exchange, the Route Peg Order would result in more favourable and efficient executions by: (1) Offering liquidity

providers a means to use the Exchange to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution; (2) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case; and (3) offering more predictable executions at the NBBO for Users by reducing the risk that incremental latency associated with routing an order to an away destination may result in an inferior execution.

Further, the Exchange believes that these benefits of the Route Peg Order would be realized only if they interact with orders that are eligible for routing, as they are characteristic of public customers who desire to execute at the best price. In contrast, notes the Exchange, professional traders typically expect to post to the book, execute immediately against the Exchange's best bid or offer, or ferret out hidden liquidity at or inside the NBBO and use non-routable orders to achieve these ends. The Exchange believes that Users would be reluctant to post liquidity through the Route Peg Order if such orders could interact with professional traders. Finally, the Exchange highlights that any User can place a routable order that is eligible for execution against a Route Peg Order.

Based on the Exchange's statements, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-EDGA-2012-28) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,

Deputy Secretary.

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¹⁰ As defined in Exchange Rule 1.5(y).

¹¹ For example, for stocks listed on the New York Stock Exchange LLC (the “NYSE”), regular session orders can be posted to the EDGA Book upon the dissemination by the responsible Securities Information Processor (“SIP”) of an opening print in that stock on the NYSE. Conversely, for stocks listed on the NASDAQ Stock Market LLC, regular session orders can be posted to the EDGA Book upon the dissemination of the NBBO by the responsible SIP in that stock.

¹² As defined in Exchange Rule 1.5(v).

¹³ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ As defined in Exchange Rule 1.5(ee).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).