

Commission, and all written communications relating to the proposed rule changes 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at 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 publicly available. All submissions should refer to File Number SR-FINRA-2013-039 and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71622; File No. SR-EDGX-2014-02]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

February 27, 2014.

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 February 18, 2014, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c) ("Fee Schedule") to: (i) Amend Flag RC, which routes to the National Stock Exchange, Inc. ("NSX") and adds liquidity; and (ii) make an administrative change to the definition of Total Consolidated Volume ("TCV"). The text of the proposed rule change is available on the Exchange's Internet 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 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 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

The Exchange proposes to amend its Fee Schedule to: (i) Amend Flag RC, which routes to the NSX and adds liquidity; and (ii) make an administrative change to the definition of TCV.

###### Flag RC

In securities priced at or above \$1.00, the Exchange currently provides a rebate of \$0.0026 per share for Members' orders that yield Flag RC, which routes to the NSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to replace this rebate with a fee of \$0.0018 per share for Members' orders that yield Flag RC. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's

affiliated routing broker-dealer, is charged for routing orders that add liquidity to NSX when it does not qualify for a volume tiered reduced fee. The proposed change is in response to NSX's February 2014 fee change where the NSX replaced its rebate of \$0.0026 per share with a fee of \$0.0018 per share for orders that add liquidity on the NSX.<sup>4</sup> When DE Route routes to and adds liquidity on the NSX, it will be charged a standard rate of \$0.0018 per share.<sup>5</sup> DE Route will pass through this rate on NSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

###### TCV Definition

On December 9, 2013, the Exchange amended its Fee Schedule to exclude odd lot transactions from the definition of TCV, which is used to determine whether a Member is eligible for certain pricing tiers, through January 31, 2014.<sup>6</sup> Prior to December 9, 2013, an odd lot transaction, which is generally an execution of less than 100 shares,<sup>7</sup> was not reported to the consolidated tape. Therefore, the Exchange did not include odd lot transactions in its calculation of TCV.<sup>8</sup> The proposal was designed to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes.

Beginning on February 1, 2014, the Exchange began to include odd lots in

<sup>4</sup> See NSX, Information Circular 14-017, Amendments to the NSX Fee and Rebate Schedule Effective on February 18, 2014, <http://www.nsx.com/resources/content/7/documents/InformationCircular14-017.pdf>.

<sup>5</sup> The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on NSX, its rate for Flag RC will not change.

<sup>6</sup> See Securities Exchange Act Release No. 71058 (December 12, 2013), 78 FR 76682 (December 18, 2013) (SR-EDGX-2013-46).

<sup>7</sup> See Exchange Rule 11.6.

<sup>8</sup> See Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). See also Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7-24-89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). See also Securities Exchange Act Release No. 70898 (November 19, 2013) (SR-NYSE-2013-75). See also announcements regarding December 9, 2013 implementation date, available at <https://cta.nyxdata.com/cta/popup/news/2385> and <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11>. If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

<sup>27</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> 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 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).

the TCV calculation after a nearly two month transition period. Therefore, the Exchange proposes to update the definition of TCV in its Fee Schedule to remove, “excluding odd lots through January 31, 2014” and no longer reflect that odd lots are excluded from the calculation of TCV. As amended, the definition of TCV would read as follows: “the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated.”

#### Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on February 18, 2014.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

#### Flag RC

The Exchange believes that its proposal to replace the pass through rebate of \$0.0026 per share for Members' orders that yield Flag RC with a fee of \$0.0018 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NSX through DE Route. Prior to NSX's February 2014 fee change, NSX provided its members a rebate of \$0.0026 per share to add liquidity to the NSX and provided DE Route that same rebate, which DE Route passed through to the Exchange and the Exchange provided to its Members. In February 2014, NSX replaced the rebate of \$0.0026 per share it provided its customers to add liquidity with a fee of \$0.0018 per share.<sup>11</sup> Therefore, the Exchange believes that the proposed change to Flag RC to replace the rebate of \$0.0026 per share with a fee of \$0.0018 per share is equitable and reasonable because it accounts for the pricing change on the NSX. In addition,

the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to the NSX and add liquidity. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

#### TCV Definition

The Exchange believes its proposal to amend its definition of TCV is reasonable because it provides Members with greater clarity with regard to how the Exchange calculates TCV. The Exchange announced in its earlier filing amending the definition of TCV that it would begin to include odd lots in the TCV calculation on February 1, 2014, after the nearly two month transition period.<sup>12</sup> The Exchange believes it is reasonable to now amend its definition of TCV to clarify that odd lots are no longer excluded. The proposed amendment is intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The proposed rule change is also equitable and not unfairly discriminatory because it would apply to all Members uniformly.

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

The Exchange believes its proposal amends its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

#### Flag RC

The Exchange believes that its proposal to pass through a fee of \$0.0018 per share for Members' orders

that yield Flag RC would increase intermarket competition because it offers customers an alternative means to route to NSX for the same price as entering orders on NSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

#### TCV Definition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal to exclude odd lot transactions from the TCV calculation was intended to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes. The Exchange believes that the proposed non-substantive change to the definition of TCV would not affect intermarket nor intramarket competition because the change does not alter the criteria necessary to achieve the tiers nor the rates offered by the tiers. In addition, the Exchange believes that other exchanges have ceased excluding odd lot transactions from the consolidated volume calculations as of February 1, 2014.<sup>13</sup>

#### 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 unsolicited written comments from Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder. 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

<sup>13</sup> See Securities Exchange Act Release No. 70997 (December 5, 2013), 78 FR 75432 (December 11, 2013) (SR-NYSE-2013-78) (amending its price list to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014); see also, Securities Exchange Act Release No. 71140 (December 19, 2013), 78 FR 78460 (December 26, 2013) (SR-BATS-2013-063) (amending its price schedule to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See NSX, Information Circular 14-017, Amendments to the NSX Fee and Rebate Schedule Effective on February 18, 2014, <http://www.nsx.com/resources/content/7/documents/InformationCircular14-017.pdf>.

<sup>12</sup> See Securities Exchange Act Release No. 71058 (December 12, 2013), 78 FR 76682 (December 18, 2013) (SR-EDGX-2013-46).

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-EDGX-2014-02 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-2014-02. 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 10:00 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-2014-02, and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71626; File No. SR-FINRA-2013-051]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Uniform Branch Office Registration Form (Form BR)

February 27, 2014.

#### I. Introduction

On November 25, 2013, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change to amend the Uniform Branch Office Registration Form ("Form BR") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on December 13, 2013.<sup>3</sup> The Commission received three comment letters on the proposed rule change.<sup>4</sup> On January 21, 2013 FINRA responded to the comment letters.<sup>5</sup> On January 23, 2014, the Commission extended the time period within which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup>

<sup>16</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> See Securities Exchange Act Release No. 71027 (December 9, 2013), 78 FR 75954 ("Notice").

<sup>4</sup> See Letter from Jason Doss, President, Public Investors Arbitration Bar Association to Elizabeth M. Murphy, Secretary, Commission, dated January 2, 2014 ("PIABA Letter"); Letter from Clifford Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers to Elizabeth M. Murphy, Secretary, Commission, dated January 3, 2014 ("CAI Letter"); Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute to Elizabeth M. Murphy, Secretary, Commission, dated January 3, 2014 ("FSI Letter").

<sup>5</sup> See Letter from Kosha Dalal, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated January 21, 2014 ("FINRA Response Letter").

<sup>6</sup> See Securities Exchange Act Release No. 71373, 79 FR 4788 (January 29, 2014)

This order approves the proposed rule change.

#### II. Description

##### *Proposed Amendments*

Form BR is used by firms to register their branch offices with FINRA, the New York Stock Exchange ("NYSE"), and participating states via the Central Registration Depository ("CRD®"). Form BR enables a firm: (1) To register a branch office, (2) amend a registration, (3) close or terminate a registration, or (4) withdraw a filing in the appropriate participating jurisdiction and self-regulatory organization ("SRO").

In concert with a committee of regulatory and industry representatives, FINRA recently undertook a review of Form BR. As a result of this review, FINRA is proposing to amend Form BR to: (1) Eliminate Section 6 (NYSE Branch Information), which is currently applicable only to NYSE-registered firms; (2) add questions relating to space sharing arrangements and the location of books and records that are currently only in Section 6 and make them applicable to all members; (3) modify existing questions and instructions to provide more detailed selections for describing the types of activities conducted at the branch office; (4) add an optional question to identify a branch office as an "Office of Municipal Supervisory Jurisdiction," as defined under the rules of the Municipal Securities Rulemaking Board (MSRB); and (5) make other technical changes to adopt uniform terminology and clarify questions and instructions (collectively, the proposed amendments to Form BR are hereinafter referred to as the "Updated Form BR").

*Delete Section 6 while Adding Questions on Space Sharing Arrangements and Location of Books and Records.* Currently only NYSE-registered firms are required to complete and update Section 6 and are the only firms that can view Section 6 on the CRD system. Section 6 of Form BR allowed NYSE to administer a pre-approval process for registration of certain branch offices that was in place at the time Form BR was implemented.<sup>7</sup> However, following the NASD/NYSE regulatory consolidation, in an effort to eliminate disparate regulatory standards, the NYSE amended NYSE Rule 342 to change its branch office

<sup>7</sup> In 2005 when Form BR was implemented, NYSE Rule 342 (Offices—Approval, Supervision and Control) required approval of new branch office registrations, and NYSE Rule 343 (Offices—Sole Tenancy, Hours, Display of Membership Certificates) required approval of space sharing arrangements, before the branch office was able to conduct business.