

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67332; File No. SR-EDGA-2012-27)

July 2, 2012

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Changes to Amend EDGA Rules Regarding Market Access

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 22, 2012, the EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.3 to (1) delete those provisions that the Exchange believes have been rendered superfluous and unnecessary in light of the adoption by the Commission of Rule 15c3-5 under the Act; and (2) add a requirement for Sponsoring Members³ to maintain a list of Sponsored Participants⁴ which the Sponsoring Member has authorized to obtain access to the Exchange’s System,⁵ and to provide the list of Sponsored Participants to the Exchange upon request. The Exchange is also proposing amendments to Rule 11.3(b)(1) and Rule 1.5(z) to align the definition of Sponsored Participant with the terminology used in Rule 15c3-5 to describe such arrangements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in EDGA Rule 1.5(aa).

⁴ As defined in EDGA Rule 1.5(z).

⁵ As defined in EDGA Rule 1.5(cc).

The text of the proposed rule changes is attached as Exhibit 5 and is available on the Exchange's 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Background on Market Access Rule

On November 3, 2010, the Commission adopted Rule 15c3-5 (the "Market Access Rule"). The Market Access Rule governs risk management controls by broker-dealers with market access. The Market Access Rule had an effective date of January 14, 2011, with phased-in compliance dates of July 14, 2011, and November 30, 2011.⁶

⁶ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2011) [sic] (File No. S7-03-10). See also Securities Exchange Act Release No. 64798 [sic] (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7-03-10) (providing limited extension of compliance date for certain requirements); Securities Exchange Act Release No. 65132 (August 15, 2011), 76 FR 51457 (August 18, 2011) (exempting floor broker operations of certain broker-dealers with market access from automated controls requirement of Rule 15c3-5).

Among other things, the Market Access Rule requires that any broker-dealer with market access,⁷ or that provides a customer or any other person with market access, must establish, document and maintain a system of risk management controls and supervisory procedures that are reasonably designed to manage the financial, regulatory and other risks of this business activity. These controls include financial risk management controls reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer itself, and to prevent the entry of erroneous orders. In addition, the Market Access Rule requires certain regulatory risk management controls that, among other things, prevent the entry of orders unless compliance with applicable regulatory requirements has been satisfied on a pre-order entry basis, and restrict access to trading systems and technology that provide market access to persons and accounts that have been pre-approved and authorized by the broker-dealer. These regulatory risk management controls also include measures designed to prevent the entry of orders for a broker-dealer, customer or other person if such person is restricted from trading those securities, and to assure that appropriate surveillance personnel receive immediate, post-trade execution reports that result from market access.

These risk management controls and associated supervisory procedures must be under the direct and exclusive control of the broker-dealer that is subject to the Market Access Rule. While a broker-dealer can use third-party providers to satisfy some or all of these requirements, the broker-dealer is nonetheless required to ensure that whatever technology or other services are provided by such third-parties are under such broker-dealer's direct and exclusive control.

⁷ The term "market access" is defined in Rule 15c3-5(a)(1) to include, *inter alia*, access to trading in securities on an exchange or alternative trading system ("ATS") as a result of being a member or subscriber of the exchange or ATS, respectively.

Rule 11.3(b): Sponsored Participants

Rule 11.3(b) sets forth the requirements for Sponsored Participants to obtain authorized access to the System through one or more Sponsoring Members by entering into and maintaining customer agreements with one or more Sponsoring Members through which the Sponsored Participant may trade on the System. Such agreements must incorporate the provisions set forth in Rule 11.3(b)(2). These contractual provisions include, *inter alia*, that: (1) Sponsored Participants must enter into and maintain an agreement with the Exchange; (2) Sponsoring Members must acknowledge and agree that all orders entered by their Sponsored Participants are binding in all respects on the Sponsoring Member; (3) Sponsoring Members must acknowledge responsibility for any and all actions taken by their Sponsored Participants; (4) Sponsored Participants of Sponsoring Members must take reasonable security precautions to prevent unauthorized use or access to the System, including unauthorized entry of information into the System, or the information and data made available therein; and (5) Sponsored Participants of Sponsoring Members must maintain, keep current and provide to the Sponsoring Member and to the Exchange, upon request, a list of Authorized Traders (“ATs”)⁸ who may obtain access to the System on behalf of such Sponsored Participant. In addition, the Sponsoring Member must provide the Exchange with a written statement in form and substance acceptable to the Exchange, identifying each Sponsored Participant by name and acknowledging its responsibility for the orders, executions and actions of such Sponsored Participants.

The Exchange believes that, as a result of the controls established under the Market Access Rule, which apply directly to Sponsoring Members, the contractual provisions contained in Rule 11.3(b) have been rendered superfluous and unnecessary. In particular, the Exchange

⁸ As defined in EDGA Rule 1.5(c).

believes that the Market Access Rule's provisions requiring that Sponsoring Members establish, document and maintain a system of risk management controls and supervisory procedures that are reasonably designed to manage the financial, regulatory and other risks of this business activity clearly establish the obligations and responsibilities of Members acting as Sponsoring Members to Sponsored Participants. The contractual provisions required under Rule 11.3(b), therefore, are not only superfluous and unnecessary but might also cause confusion on the part of Sponsoring Members as to the obligations that have been squarely imposed upon them by the Market Access Rule. Therefore, the Exchange is proposing to delete the provisions in current Rule 11.3(b)(2)(A)-(I), the second sentence of Rule 11.3(b)(1) and Rule 11.3(b)(3) and replace them with the provisions described below. In addition, the Exchange is making conforming amendments to Rule 11.3(a) to require that only Members, and not Users (which term is defined to include not only Members but their Sponsored Participants), enter into agreements with the Exchange. Additional conforming amendments are being proposed to the definition of Sponsored Participant (Rules 1.5(z) and 11.3(b)(1)) to align such definition with the terminology used in the Market Access Rule.

The Exchange is retaining the requirement in Rule 11.4(a) that all Members shall maintain a list of ATs who may obtain access to the System on behalf of the Member or the Member's Sponsored Participants. Members must continue to provide such list of ATs to the Exchange upon request. This requirement is being retained in order to ensure that Sponsoring Members continue to track whom they grant access to their systems and to enable the Exchange to request such information upon request, if necessary. In addition, in order to maintain transparency into who is accessing the Exchange's System, the Exchange is also amending Rule 11.3(b)(2) to require Sponsoring Members to maintain a list of Sponsored Participants whom the

Sponsoring Member has authorized to obtain access to the System pursuant to Rule 11.3. The amended rule will also provide that the Sponsoring Member shall update the list of Sponsored Participants as necessary, and provide the list to the Exchange upon request. The Exchange also proposes to amend Rule 11.3(b)(3) to require that Sponsoring Members shall comply with all requirements under the Market Access Rule with regard to market access arrangements with Sponsored Participants.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act⁹ and further the objectives of Section 6(b)(5) of the Act,¹⁰ in that they are 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule changes are consistent with these obligations because they are designed to eliminate superfluous and unnecessary regulatory requirements, and thereby avoid potential confusion. Additionally, the proposed rule changes are designed to make the Exchange's Rules clearer and more transparent to Members by eliminating provisions that have been rendered superfluous and unnecessary by the Market Access Rule.

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

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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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 changes.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-2012-27 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-EDGA-2012-27. 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-EDGA-2012-27, 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).