

1. Text of the Proposed Rule Change

- (a) EDGX Exchange, Inc. (“EDGX” or the “Exchange”), proposes to amend EDGX Rule 11.5(a)(2) to provide that the system functionality that cancels any portion of a market order submitted to the Exchange that would execute at a price that is more than \$0.50 or 5 percent worse than last sale at the time the order initially reaches the Exchange, whichever is greater, does not apply to Destination-on-Open orders, as defined in Rule 11.5(c)(10). The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office, and at the Public Reference Room of the Commission.
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on April 27, 2010. Exchange staff will advise the EDGX Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric W. Hess  
General Counsel  
EDGX Exchange  
201-942-8239

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

(a) Purpose

As provided in SR-EDGX-2010-14<sup>1</sup>, Exchange Rule 11.5(a)(2) protects market participants from executions at prices that are significantly worse than the last sale

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<sup>1</sup> See Securities Exchange Act Release No. 63163 (October 22, 2010), 75 FR 66408 (October 28, 2010) (SR-EDGX-2010-14).

at the time of order entry by providing Exchange system functionality that cancels any portion of a market order (as defined in Rule 11.5(a)(2)) that would execute at a price that is 50 cents or 5 percentage points worse than the consolidated last sale, whichever is greater. Any portion of a market order that would otherwise execute outside of these thresholds is immediately cancelled back to the User.<sup>2</sup>

The Exchange proposes to modify Rule 11.5(a)(2) to provide that Destination-on-Open orders, as defined in Rule 11.5(c)(10),<sup>3</sup> are not subject to these market collars.<sup>4</sup> The rationale for this exception is twofold. First, using a reference price calculation for market collar thresholds at the open of trading is problematic because of the potential lack of trading activity just prior to the open and the resulting price dislocation. Therefore, the reference price for a market collar on a Destination-on-Open order could be out of line with the market at the open of the regular trading session. In addition, other Exchanges also address this issue similarly by excluding market on open orders as well.<sup>5</sup>

(b) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the “Act”),<sup>6</sup> which requires the rules of an exchange 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. The Exchange believes that excluding Destination-on-Open orders from the application of market collars is appropriate in order to avoid the potential dislocation between the reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session.

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<sup>2</sup> A User is defined in Exchange Rule 1.5(cc) as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3”.

<sup>3</sup> Rule 11.5(c)(10) defines a Destination-on-Open order, in part, as “a market or limit order that instructs the System to route the order to a specified away trading center to participate in said trading center’s opening process, without being processed by the System as described below in Rule 11.9(b)(1).”

<sup>4</sup> The Exchange notes that when orders are routed to an away trading center, such away trading centers’ collar rules apply, when applicable, regardless of the Exchange’s proposed exclusion for Destination-on-Open orders.

<sup>5</sup> See, e.g., Nasdaq Rule 4751(f)(13) which excludes market on open orders from the definition of “collared orders.” See also Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR-Nasdaq-2009-070).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Accordingly, the modifications to Exchange Rule 11.5 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange will issue an information circular to all Members prior to implementation, which will be on or about December 14, 2010.

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

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

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6)<sup>8</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission 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 provided 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.<sup>9</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

Accordingly, because the Exchange believes that this exception from the market order thresholds described in Rule 11.5(a)(2) is “non-controversial” and is important to its maintenance of a fair and orderly market and the protection of investors, the Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>10</sup> Waiver of this requirement is consistent with the protection of investors and the public interest. Such waiver will avoid potential price dislocation between the reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session. It will also enable the Exchange to implement this change on or about December 14, 2010.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on Nasdaq Rule 4751(f)(13), which is similar to EDGA Rule 11.5(a)(2). This Nasdaq rule provides that any portion of a collared order that would execute (either on Nasdaq or when routed to another market center) at a price more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled. However, Nasdaq’s rule excludes market on open orders that are included in the Nasdaq opening cross from their definition of “collared orders.”<sup>11</sup> EDGA proposes exclude Destination-on-Open orders from its collar rule, which is EDGA Rule 11.5(a)(2).

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed EDGX Rule 11.5.

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<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> See Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR-Nasdaq-2009-070).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGX-2010-24

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.5

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 December 13, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "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

EDGX Exchange, Inc. ("EDGX" or the "Exchange"), proposes to amend EDGX Rule 11.5(a)(2) to provide that the system functionality that cancels any portion of a market order submitted to the Exchange that would execute at a price that is more than \$0.50 or 5 percent worse than last sale at the time the order initially reaches the Exchange, whichever is greater, does not apply to Destination-on-Open orders, as defined in Rule 11.5(c)(10). The text of the proposed rule change is available on the Exchange's

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Internet 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 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 Statutory Basis for, the Proposed Rule Change

Purpose

As provided in SR-EDGX-2010-14,<sup>3</sup> Exchange Rule 11.5(a)(2) protects market participants from executions at prices that are significantly worse than the last sale at the time of order entry by providing Exchange system functionality that cancels any portion of a market order (as defined in Rule 11.5(a)(2)) that would execute at a price that is 50 cents or 5 percentage points worse than the consolidated last sale, whichever is greater. Any portion of a market order that would otherwise execute outside of these thresholds is immediately cancelled back to the User.<sup>4</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 63163 (October 22, 2010), 75 FR 66408 (October 28, 2010) (SR-EDGX-2010-14).

<sup>4</sup> A User is defined in Exchange Rule 1.5(cc) as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3".

The Exchange proposes to modify Rule 11.5(a)(2) to provide that Destination-on-Open orders, as defined in Rule 11.5(c)(10),<sup>5</sup> are not subject to these market collars.<sup>6</sup>

The rationale for this exception is twofold. First, using a reference price calculation for market collar thresholds at the open of trading is problematic because of the potential lack of trading activity just prior to the open and the resulting price dislocation.

Therefore, the reference price for a market collar on a Destination-on-Open order could be out of line with the market at the open of the regular trading session. In addition, other Exchanges also address this issue similarly by excluding market on open orders as well.<sup>7</sup>

#### Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>8</sup> which requires the rules of an exchange 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. The Exchange believes that excluding Destination-on-Open orders from the application of market collars is appropriate in order to avoid the potential dislocation between the

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<sup>5</sup> Rule 11.5(c)(10) defines a Destination-on-Open order, in part, as “a market or limit order that instructs the System to route the order to a specified away trading center to participate in said trading center’s opening process, without being processed by the System as described below in Rule 11.9(b)(1).”

<sup>6</sup> The Exchange notes that when orders are routed to an away trading center, such away trading centers’ collar rules apply, when applicable, regardless of the Exchange’s proposed exclusion for Destination-on-Open orders.

<sup>7</sup> See, e.g., Nasdaq Rule 4751(f)(13) which excludes market on open orders from the definition of “collared orders.” See also Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR-Nasdaq-2009-070).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session. Accordingly, the modifications to Exchange Rule 11.5 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange will issue an information circular to all Members prior to implementation, which will be on or about December 14, 2010.

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

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.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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

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<sup>9</sup> 15 U.S.C. 78k-1(a)(1).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may 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.

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](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2010-24 on the subject line.

##### Paper comments:

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<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

- 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-EDGX-2010-24. 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 Commissions 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 inspection and copying in the Commission's Public Reference Room. Copies of such 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-2010-24 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5

Text of the proposed rule change (Additions are underlined; deletions are in [brackets].)

## Rule 11.5. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.5, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) *General Order Types.* No change

(1) No change

(2) Market Order. An order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. Market orders shall not trade through Protected Quotations. A market order that is designated as “EDGX Only” will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.9(b)(1). Market orders that are not designated as “EDGX Only” and that cannot be executed in accordance with Rule 11.9(b)(1) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.9(b)(2). Except with respect to a Destination-on-Open Order, as defined in paragraph (c)(10), below, [A]any portion of a market order that would execute at a price more than \$0.50 or 5 percent worse than the consolidated last sale at the time the order initially reaches the Exchange, whichever is greater, will be cancelled. Market orders are not eligible for execution during the Pre-Opening or the Post-Closing Trading Sessions.

(b) – (e) No change