



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

[Add](#) [Remove](#) [View](#)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

[Add](#) [Remove](#) [View](#)

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

[Add](#) [Remove](#) [View](#)

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) EDGX Exchange, Inc. (“EDGX” or the “Exchange”), proposes to amend the EDGX By-Laws to: (i) incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange’s ability to retain a third party to perform all or a portion of its audit function. 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 (the “Board”) on May 17, 2010 and, with respect to the clarification relating to the Audit Committee, on April 27, 2010. No further action by the Board or the membership of the Exchange is required. 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:

Thomas N. McManus  
Chief Regulatory Officer  
EDGX Exchange  
201-418-3471

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

(a) Purpose

The purpose of this filing is to make improvements to the Exchange’s governance, and make certain clarifying amendments to its By-Laws. Specifically, the Exchange proposes to: (i) incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the

Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function.

First, EDGX proposes certain amendments to its By-Laws to improve its governance. Article VI, Section 2 of the By-Laws currently provides, in pertinent part, that the Nominating Committee shall nominate candidates for election to the Board and all other vacant or new Director positions on the Board. The Board met and approved the assignment of additional responsibilities for the Nominating Committee. Specifically, the Committee shall nominate chairpersons to serve on committees of the Board; oversee the implementation and effectiveness of the By-Laws, committee charters and other governance documents as needed; review and make recommendations regarding best practices in corporate governance; and oversee an annual self-evaluation of the independent Directors and each Board committee.

The Exchange believes that combining nominating and governance functions in a single committee will help ensure a careful consideration of nominees through a structured process. Although distinct, nominating and governance are related functions. The combined functions will allow the Nominating and Governance Committee to play a critical role in overseeing matters of corporate governance for the Board, including formulating and recommending governance principles. The Exchange believes that consolidating these functions in a single committee will improve the input of the committee in the overall committee process by taking advantage of overlaps in issues emanating from each function.

Combining governance responsibilities will not impair the committee's functioning. The overlap in responsibilities should improve efficiency as well as coordination within the Exchange, as the same group of committee members will oversee the entire nominating and governance function. Through these new functions, the Nominating and Governance Committee will have a greater role in overseeing Exchange governance. As a result, the Committee will be better positioned to provide future governance advice, while gaining a better understanding of the skills and attributes necessary for a candidate for Board membership or committee chairpersonship. By enhancing the quality of nominees to the Board, and ensuring the integrity of the nomination process, the Exchange believes that these additional functions will considerably improve its governance to the benefit of the Exchange and its stockholders.

The Exchange believes that combining nominating and governance functions within one committee is consistent with prior precedent, in that the Chicago Board Options Exchange, C2 Options Exchange, Inc., NYSE Euronext and the NASDAQ OMX Group, Inc. currently have a Nominating and Governance Committee<sup>1</sup> performing

---

<sup>1</sup> See Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.; Article IV, Section 4.4 of the By-Laws of NYSE Euronext; Article IV, Section 4.13(h) of the By-Laws of the NASDAQ OMX Group, Inc.

functions similar to those proposed in this filing.<sup>2</sup>

Second, EDGX By-Laws currently provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the “Nominating and Governance Committee.” The Exchange proposes to amend the By-Laws to change all references to the “Nominating Committee” to state “Nominating and Governance Committee.”

Third, the Exchange added the phrase “Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function” to Article V, Section 5(b) of its By-Laws. Under the current powers and responsibilities listed in that section of the By-Laws, the Audit Committee shall direct and oversee all the activities of the Company’s internal audit function, including management’s responsiveness to internal audit recommendations. Specifically, the Board seeks to clarify that references to the internal audit function relate to internal controls, and do not necessarily require internal auditors to perform the internal audit function. Accordingly, this amendment does not change the Audit Committee’s current responsibilities, but is intended to clarify the Exchange’s current ability to retain a third party auditor through codification in the By-Laws. The Exchange notes that it shall supervise and retain primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange’s audit function.

(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>3</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.

Specifically, the proposed additions will improve EDGX’s governance structure by taking advantage of overlaps in nominating and governance functions. The additions promote consistency and efficiency in governance by consolidating these functions in one committee. Through the implementation of sound governance policies and practices, the Nominating Committee can better enhance the quality of Board nominees and ensure the

---

<sup>2</sup> See Nominating and Governance Committee Charter, Chicago Board of Options Exchange (adopted May 17, 2011); Nominating & Corporate Governance Committee Charter, NASDAQ OMX Group, Inc. (approved July 26, 2010); Nominating and Governance Committee Charter, NYSE Euronext (adopted Dec. 12, 2007). Although not named the Nominating and Governance Committee, the International Securities Exchange’s Corporate Governance Committee also performs nominating and governance functions similar to those proposed by EDGX. See Charter of the Corporate Governance Committee of International Securities Exchange, LLC.

<sup>3</sup> 15 U.S.C. 78f(b)(5).

integrity of the nomination process. This furthers EDGX's ability to be organized in a manner to have the capacity to carry out the purposes of the Act consistent with Section 6(b)(1) of the Act<sup>4</sup> and to carry out the purposes of Section 6(b)(5) of the Act.<sup>5</sup>

The changes will ensure that the committee's title accurately reflects the Nominating Committee's new governance functions as adopted by the Board. Codifying the Audit Committee's ability to retain third party auditors reflects the Board's determination that outsourcing the internal audit function to a third-party auditor can benefit the Exchange by providing another mechanism to detect and prevent fraudulent and manipulative acts and practices. Accordingly, the Exchange believes that the amendments are consistent with investor protection and the public interest.

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>6</sup> of the Act and Rule 19b-4(f)(6)<sup>7</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

---

<sup>4</sup> 15 U.S.C. 78f(b)(1).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

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>8</sup>

EDGX believes that the instant filing is appropriately filed pursuant to Rule 19b-4(f)(6) because the proposed changes are similar to actions taken by other exchanges. Specifically, the proposal to re-name the Nominating Committee to the Nominating and Governance Committee is consistent with the committee names of other exchanges.<sup>9</sup> The proposal to include language in the EDGX By-laws stating that the Nominating and Governance Committee's responsibilities are not limited to those explicitly listed in the By-law text is identical to language in the Chicago Board Options Exchange and C2 Options Exchange By-laws.<sup>10</sup> The additional Nominating and Governance Committee responsibilities proposed for inclusion in the By-law text are similar to responsibilities of analogous committees of other exchanges.<sup>11</sup>

EDGX further respectfully requests that the Commission waive the 30-day delayed operative date so that this proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder. EDGX believes that such waiver is consistent with the protection of investors and the public interest because it will enable the Exchange to immediately implement the proposed rule changes and thereby provide an enhanced governance experience for the Exchange and its Members. Therefore, the Exchange believes that waiver of the 30-day pre-operative delay is consistent with Rule 19b-4(f)(6).<sup>14</sup>

---

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

<sup>9</sup> See supra note 1 for a list of exchanges which currently maintain a Nominating and Governance Committee.

<sup>10</sup> Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.

<sup>11</sup> See supra note 2.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

The proposal to amend EDGX By-laws Article VI, Section 2 to include language stating that the Nominating and Governance Committee's responsibilities are not limited to those explicitly listed in the By-law text is based on similar actions taken by other exchanges, including the Chicago Board Options Exchange<sup>15</sup> and C2 Options Exchange.<sup>16</sup>

The additional, explicit Nominating and Governance Committee responsibilities proposed for inclusion in the Exchange By-laws are based on similar responsibilities of analogous committees of other exchanges, including the Chicago Board Options Exchange, the International Securities Exchange, LLC, the NASDAQ OMX Group, Inc. and NYSE Euronext.<sup>17</sup>

The proposal to amend the name of the Nominating Committee to the Nominating and Governance Committee is based on similar actions taken by other exchanges, including Chicago Board Options Exchange, C2 Options Exchange, Inc., NYSE Euronext and the NASDAQ OMX Group, Inc.<sup>18</sup>

9. Exhibits

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

Exhibit 5 – Text of Proposed EDGX By-Laws

---

<sup>15</sup> Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange.

<sup>16</sup> Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.

<sup>17</sup> See supra note 2.

<sup>18</sup> See supra note 1 for the relevant By-Law provisions.

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGX-2011-29)

[Date]

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

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 September 2, 2011, 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

The Exchange proposes to amend the EDGX By-Laws to: (i) incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function. 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.

---

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

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

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 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

The purpose of this filing is to make improvements to the Exchange's governance, and make certain clarifying amendments to its By-Laws. Specifically, the Exchange proposes to: (i) incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function.

First, EDGX proposes certain amendments to its By-Laws to improve its governance. Article VI, Section 2 of the By-Laws currently provides, in pertinent part, that the Nominating Committee shall nominate candidates for election to the Board and all other vacant or new Director positions on the Board. The Board met and approved the assignment of additional responsibilities for the Nominating Committee. Specifically, the Committee shall nominate chairpersons to serve on committees of the Board; oversee the implementation and effectiveness of the By-Laws, committee charters and other

governance documents as needed; review and make recommendations regarding best practices in corporate governance; and oversee an annual self-evaluation of the independent Directors and each Board committee.

The Exchange believes that combining nominating and governance functions in a single committee will help ensure a careful consideration of nominees through a structured process. Although distinct, nominating and governance are related functions. The combined functions will allow the Nominating and Governance Committee to play a critical role in overseeing matters of corporate governance for the Board, including formulating and recommending governance principles. The Exchange believes that consolidating these functions in a single committee will improve the input of the committee in the overall committee process by taking advantage of overlaps in issues emanating from each function.

Combining governance responsibilities will not impair the committee's functioning. The overlap in responsibilities should improve efficiency as well as coordination within the Exchange, as the same group of committee members will oversee the entire nominating and governance function. Through these new functions, the Nominating and Governance Committee will have a greater role in overseeing Exchange governance. As a result, the Committee will be better positioned to provide future governance advice, while gaining a better understanding of the skills and attributes necessary for a candidate for Board membership or committee chairpersonship. By enhancing the quality of nominees to the Board, and ensuring the integrity of the nomination process, the Exchange believes that these additional functions will considerably improve its governance to the benefit of the Exchange and its stockholders.

The Exchange believes that combining nominating and governance functions within one committee is consistent with prior precedent, in that the Chicago Board Options Exchange, C2 Options Exchange, Inc., NYSE Euronext, and the NASDAQ OMX Group, Inc. currently have a Nominating and Governance Committee<sup>3</sup> performing functions similar to those proposed in this filing.<sup>4</sup>

Second, EDGX By-Laws currently provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the “Nominating and Governance Committee.” The Exchange proposes to amend the By-Laws to change all references to the “Nominating Committee” to state “Nominating and Governance Committee.”

Third, the Exchange added the phrase “Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function” to Article V, Section 5(b) of its By-Laws. Under the current powers and responsibilities listed in that section of the By-Laws, the Audit Committee shall direct and oversee all the activities of the Company’s internal audit function, including management’s responsiveness to internal audit recommendations.

---

<sup>3</sup> See Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.; Article IV, Section 4.4 of the By-Laws of NYSE Euronext; Article IV, Section 4.13(h) of the By-Laws of the NASDAQ OMX Group, Inc.

<sup>4</sup> See Nominating and Governance Committee Charter, Chicago Board of Options Exchange (adopted May 17, 2011); Nominating & Corporate Governance Committee Charter, NASDAQ OMX Group, Inc. (approved July 26, 2010); Nominating and Governance Committee Charter, NYSE Euronext (adopted Dec. 12, 2007). Although not named the Nominating and Governance Committee, the International Securities Exchange’s Corporate Governance Committee also performs nominating and governance functions similar to those proposed by EDGX. See Charter of the Corporate Governance Committee of International Securities Exchange, LLC.

Specifically, the Board seeks to clarify that references to the internal audit function relate to internal controls, and do not necessarily require internal auditors to perform the internal audit function. Accordingly, this amendment does not change the Audit Committee's current responsibilities, but is intended to clarify the Exchange's current ability to retain a third party auditor through codification in the By-Laws. The Exchange notes that it shall supervise and retain primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange's audit function.

#### Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>5</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.

Specifically, the proposed additions will improve EDGX's governance structure by taking advantage of overlaps in nominating and governance functions. The additions promote consistency and efficiency in governance by consolidating these functions in one committee. Through the implementation of sound governance policies and practices, the Nominating Committee can better enhance the quality of Board nominees and ensure the integrity of the nomination process. This furthers EDGX's ability to be organized in a manner to have the capacity to carry out the purposes of the Act consistent with Section 6(b)(1) of the Act<sup>6</sup> and to carry out the purposes of Section 6(b)(5) of the Act.<sup>7</sup>

---

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

<sup>6</sup> 15 U.S.C. 78f(b)(1).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

The changes will ensure that the committee's title accurately reflects the Nominating Committee's new governance functions as adopted by the Board. Codifying the Audit Committee's ability to retain third party auditors reflects the Board's determination that outsourcing the internal audit function to a third-party auditor can benefit the Exchange by providing another mechanism to detect and prevent fraudulent and manipulative acts and practices. Accordingly, the Exchange believes that the amendments are consistent with investor protection and the public interest.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6)<sup>9</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

---

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

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

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.

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 satisfied this requirement.

The Exchange submits that this filing is appropriately filed pursuant to Rule 19b-4(f)(6) because the proposed changes are similar to actions taken by other exchanges. Specifically, the proposal to re-name the Nominating Committee to the Nominating and Governance Committee is consistent with the committee names of other exchanges.<sup>10</sup> The proposal to include language in the EDGX By-laws stating that the Nominating and Governance Committee's responsibilities are not limited to those explicitly listed in the By-law text is identical to language in the Chicago Board Options Exchange and C2 Options Exchange By-laws.<sup>11</sup> The additional Nominating and Governance Committee responsibilities proposed for inclusion in the By-law text are similar to responsibilities of analogous committees of other exchanges.<sup>12</sup>

The Exchange believes that its proposal should become immediately effective and requests that the Commission waive the 30-day pre-operative waiting period contained in

---

<sup>10</sup> See supra note 3 for a list of exchanges which currently maintain a Nominating and Governance Committee.

<sup>11</sup> Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.

<sup>12</sup> See supra note 4.

Rule 19b-4(f)(6)(iii) under the Act.<sup>13</sup> EDGX believes that such waiver is consistent with the protection of investors and the public interest because it will enable the Exchange to immediately implement the proposed rule changes and thereby provide an enhanced governance experience for the Exchange and its Members. Therefore, the Exchange believes that waiver of the 30-day pre-operative delay is consistent with Rule 19b-4(f)(6).<sup>14</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 No. SR-EDGX-2011-29 on the subject line.

---

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGX-2011-29. 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-2011-29 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 Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Secretary

---

<sup>15</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

**Additions double underlined**

**Deletions [bracketed]**

**AMENDED AND RESTATED  
BYLAWS OF EDGX EXCHANGE, INC.  
(a Delaware corporation)**

**ARTICLE I**

**Definitions**

When used in these Bylaws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) - (w) (No change).

(x) “Nominating and Governance Committee” means the Nominating and Governance Committee elected pursuant to these Bylaws.

(y) - (kk) (No change).

\* \* \* \* \*

**ARTICLE III**

**Board of Directors**

Section 1. Powers

(a) - (e) (No change).

Section 2. Composition of the Board

(a) - (b) (No change).

(c) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee’s classification as an Independent Director or Exchange Member Director, and the Secretary shall certify to the Nominating and Governance Committee or the Exchange Member Nominating Committee each nominee’s classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(d) (No change).

**Section 3.** (No change).

Section 4. Nomination, Election and Appointment

(a) The Nominating and Governance Committee each year shall nominate Directors for each Director position (other than Owner Director positions and the Director position filled by the Chief Executive Officer) standing for election at the annual meeting of stockholders that year. For positions requiring persons who qualify as Exchange Member Directors, the Nominating and Governance Committee shall nominate only those persons whose names have been approved and submitted by the Exchange Member Nominating Committee, and approved by, if applicable, Exchange Members pursuant to the procedures set forth below in this Article III, Section 4.

(b) The Exchange Member Nominating Committee shall consult with the Nominating and Governance Committee and the Chairman, and shall solicit comments from Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Exchange Member Director.

(c) Not later than sixty (60) days prior to the date announced as the date for the annual meeting of stockholders, the Exchange Member Nominating Committee shall report to the Nominating and Governance Committee and the Secretary the initial nominees for Exchange Member Director positions on the Board that have been approved and submitted by the Exchange Member Nominating Committee. The Secretary shall promptly notify Exchange Members of those initial nominees. Exchange Members may identify other candidates (“Petition Candidates”) for the Exchange Member Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders (the “Petition Deadline”), a written petition, which shall designate the candidate by name and office and shall be signed by Exchange Member Representatives representing ten percent (10%) or more of the Exchange Members. An Exchange Member may endorse as many candidates as there are Exchange Member Director positions to be filled. No Exchange Member, together with its Affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such Exchange Member, together with its Affiliates, in excess of the fifty percent (50%) limitation shall be disregarded.

(d) (No change).

(e) If no valid petitions from Exchange Members are received by the Petition Deadline, the initial nominees approved and submitted by the Exchange Member Nominating Committee shall be nominated as Exchange Member Directors by the Nominating and Governance Committee. If one or more valid petitions from Exchange Members are received by the Petition Deadline, the Secretary shall include such additional nominees, along with the initial nominees nominated by the Exchange Member Nominating Committee, on a list of nominees (the “List of Candidates”). Upon completion, the List of Candidates shall be sent by the Secretary to all Exchange Members that were Exchange Members on the Petition Date to confirm the nominees for Exchange Member Director positions. The List of Candidates shall be

accompanied by a notice regarding the time and date of an election to be held at least twenty (20) days prior to the annual stockholders meeting to confirm the Exchange Members' selections of nominees for Exchange Member Directors.

(f) - (g) (No change).

**Section 5.** (No change).

Section 6. Vacancies

(a) Whenever any Director position, other than an Owner Director or Exchange Member Director position, becomes vacant prior to the election of a successor at the end of such Director's term, whether because of death, disability, disqualification, removal or resignation, and whenever any newly-created Director position, other than an Owner Director or Exchange Member Director position, becomes available because of an increase in the number of Directors, the Nominating and Governance Committee shall nominate, and a majority of Directors then in office, though less than a quorum or a sole remaining Director, shall elect, a person satisfying the classification (Independent or At-Large Director) for the directorship to fill such vacancy until the expiration of the remaining term or to fill such newly-created Director position until the expiration of such position's designated term; *provided*, however, that if the remaining term of office of a Director at the time of such Director's vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of such vacancy; and *further provided*, that any vacancy resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs.

(b) Whenever any Exchange Member Director position becomes vacant prior to the election of a successor at the end of such Exchange Member Director's term, whether because of death, disability, disqualification, removal or resignation, and whenever any newly-created Exchange Member Director position becomes available because of an increase in the number of Directors, the Exchange Member Nominating and Governance Committee shall nominate, and a majority of Directors then in office, though less than a quorum or a sole remaining Director, shall elect, a person satisfying the classification for the Exchange Member Director position to fill such vacancy until the expiration of the remaining term or to fill such newly-created Exchange Member Director position until the expiration of such position's designated term; *provided*, however, that if the remaining term of office of an Exchange Member Director at the time of such Exchange Member Director's vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of such vacancy; and *further provided*, that any vacancy resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs.

(c) (No change).

**Sections 7 - 16** (No change).

## ARTICLE IV

### STOCKHOLDERS

#### Section 1. Annual Meeting; Election of Directors and Other Matters

(a) The annual meeting of stockholders shall be held at such place and time as determined by the Board for the purpose of electing Directors and members of the Nominating and Governance Committee and Exchange Member Nominating Committee, and for conducting such other business as may properly come before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting, unless otherwise required by law, the Certificate of Incorporation or these Bylaws.

(b) (No change).

**Sections 2 - 6** (No change).

## ARTICLE V

### Committees of the Board

**Sections 1 - 4** (No change).

#### Section 5. Specified Committees

(a) (No change).

(b) The Board, after consultation with the Chairman, shall designate the members of an Audit Committee, which shall consist solely of Directors, including a majority of Independent Directors. An Independent Director shall serve as Chairman of the Audit Committee. The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Company's financial reporting process and the financial information that is provided to stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Company's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Company's independent auditors (or nominate the independent auditors to be proposed for ratification by stockholders); and (D) direct and oversee all the activities of the Company's internal audit function, including management's responsiveness to internal audit recommendations. The Audit Committee shall have authority to: (A) hire or terminate the head of the Company's Internal Audit Department; (B) determine the compensation of the head of the Internal Audit Department; and (C) determine the budget for the Internal Audit Department. The Internal Audit Department and its head shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Internal Audit Department also report to senior management of the Company on matters the Audit Committee deems appropriate and may request that senior management of the Company perform such operational oversight as necessary

and proper, consistent with preservation of the independence of the internal audit function. Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function, provided that the Exchange shall supervise and have primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange's audit function.

(c) - (e) (No change).

## ARTICLE VI

### Nominating and Governance Committees

#### Section 1. Election of Nominating and Governance Committee and Exchange Member Nominating Committee

The Nominating and Governance Committee and the Exchange Member Nominating Committee shall each be elected on an annual basis by a vote of the stockholders. The initial Nominating Committee and Exchange Member Nominating Committee as of the date hereof are as set forth on Exhibit B and shall serve until the first annual meeting of stockholders following the adoption of these Bylaws. In each subsequent year, each of the Nominating and Governance Committee and Exchange Member Nominating Committee, after completion of its respective duties for nominating Directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating and Governance Committee or Exchange Member Nominating Committee, as applicable, such candidates to be voted on by the stockholders at the annual meeting of stockholders. Additional candidates for the Exchange Member Nominating Committee may be nominated and elected pursuant to the same process as provided for in Article III, Section 4.

#### Section 2. Nominating and Governance Committee

The Nominating and Governance Committee shall nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board (other than Owner Director positions). The Nominating and Governance Committee, in making such nominations, is responsible for ensuring that candidates meet the compositional requirements of Article III, Section 2(b). The Nominating and Governance Committee shall be responsible for nominating chairpersons to serve on the committees of the Board; overseeing the implementation and effectiveness of the By-laws, committee charters and other governance documents as needed; reviewing and recommending best practices in corporate governance; and overseeing an annual self-evaluation of the independent Directors and each Board committee. The Nominating and Governance Committee shall consist solely of three Independent Directors, one of whom shall be in each class. The Nominating and Governance Committee shall have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Charter of the Nominating and Governance Committee as adopted by resolution of the Board.

#### Section 3. (No change).

\* \* \* \* \*

**EXHIBIT A** (No change).

**EXHIBIT B**  
**Initial Nominating Committee\***

Name
Richard Schenkman
Samuel Miller
William Dailey

**Initial Exchange Member Nominating Committee**

Name
Noel Dalzell
Richard Gorelick
Suhas Daftuar

---

\* Re-named to the Nominating and Governance Committee in 2011.