

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="45"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="17"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by EDGA Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * <input type="text" value="Jeffrey"/>	Last Name * <input type="text" value="Rosenstock"/>
Title * <input type="text" value="General Counsel"/>	
E-mail * <input type="text" value="jrosenstock@directedge.com"/>	
Telephone * <input type="text" value="(201) 942-8295"/>	Fax <input type="text"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date <input type="text" value="04/25/2012"/>		
By <input type="text" value="Jeffrey S. Rosenstock"/>	<input type="text" value="General Counsel"/>	
(Name *)	(Title *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

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)**

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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)**

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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**

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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**

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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**

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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**

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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**

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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 Changes

(a) EDGA Exchange, Inc. (“EDGA” or the “Exchange” or the “Company”), proposes to amend certain sections of the Amended and Restated Bylaws of EDGA Exchange, Inc. (the “Current Bylaws”) to conform with the Exchange’s current corporate governance practices. The text of the proposed rule changes to the Amended and Restated Bylaws of EDGA Exchange, Inc. (“New Bylaws”) is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule changes 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 the Board of Directors of the Exchange on December 12, 2011. No other action is necessary for the filing of the rule changes. Therefore, the Exchange's internal procedures with respect to the proposed changes are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule changes is:

Thomas N. McManus  
Chief Regulatory Officer  
EDGA Exchange, Inc.  
201-418-3471

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

(a) Purpose

The Exchange proposes to amend certain sections of the Current Bylaws to conform with the Exchange’s current corporate governance practices. In addition, the Exchange proposes to address other non-substantive revisions to reflect changes since the Securities and Exchange Commission (the “SEC” or the “Commission”) granted the Exchange’s registration as a national securities exchange in March 2010.<sup>1</sup>

Board of Directors

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<sup>1</sup> See Securities and Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

Article III, Section 5 of the Current Bylaws state that the Chief Executive Officer shall also be the Chairman of the Board of Directors (the “Board”). The Exchange proposes to revise this provision in the New Bylaws to state, “[t]he Directors shall choose among themselves who will be the Chairman of the Board (the “Chairman”), who may also be the Chief Executive Officer,” because the Exchange believes separating the two roles is a good corporate governance practice and provides the Board additional flexibility when determining the Chairman. In addition, the Exchange proposes to add clarifying language that states that if the Chief Executive Officer or other member of management of the Exchange is the Chairman, then he or she shall not participate in executive sessions of the Board. The Exchange believes this amendment helps to preserve the purpose of the executive session, which is for the Board to meet without the Exchange’s management present. Similarly, the Exchange proposes to make a conforming amendment to Article VII, Section 6, to provide that the Chief Executive Officer may be the Chairman of the Board.

#### Committees of the Board

The Exchange’s Board consists of an Appeals Committee, an Audit Committee, a Compensation Committee, an Executive Committee and a Regulatory Oversight Committee (collectively, the “Board Committees”). In Article V, the Exchange proposes to amend the Current Bylaws to more fully describe the responsibilities of the Board Committees and to be consistent with the provisions of the Board Committees’ charters.

In Article V, Section 5(a), the Exchange proposes to amend the Current Bylaws to state that the Compensation Committee is also responsible for assisting the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange’s ability to fulfill its responsibilities as a Self Regulatory Organization (“SRO”).

In Article V, Section 5(b) (proposed to be re-numbered as Section 5(b)(i) - (vii)), the Exchange proposes to amend the Current Bylaws to state that the Audit Committee is also responsible for assisting the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; taking appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; overseeing all activities of the Exchange’s internal audit function, including management’s responsiveness to internal audit recommendations and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, selecting and replacing and determining the compensation of the third party provider), in consultation with management; and overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to amend the language in Article V, Section 5(b)(iv) and (v), respectively, to elaborate on the Audit Committee’s responsibility to provide oversight over the systems of internal controls, technology and information integrity established by

management and the Board and the Exchange's legal and compliance process as well as to further clarify the Audit Committee's responsibilities around independent auditors.

In Article V, Section 5(c), the Exchange proposes to amend the Current Bylaws to elaborate on the Regulatory Oversight Committee's duties to assist the Board in fulfilling its responsibilities to oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Securities and Exchange Act of 1934 (the "Act"). The Exchange also proposes to amend the language in Article V, Section 5(c) to clarify that the Regulatory Oversight Committee's responsibility to oversee the overall effectiveness of the Exchange's performance of its regulatory functions.

In Article V, Section 5(e), the Exchange proposes to amend the Current Bylaws to clarify that the Executive Committee is also responsible for facilitating coordination of the Board processes among other things.

#### Committees of the Exchange

The Exchange proposes to amend the title of Article VI from "Nominating and Governance Committees" to "Committees of the Exchange" in the New Bylaws because this section includes the Nominating and Governance Committees and the Exchange Member Nominating Committee.

In Article VI, Section 2, the Exchange proposes to amend the Current Bylaws to elaborate on the Nominating and Governance Committee's responsibilities to develop and recommend governance policies to the Board and to oversee an orientation for new Directors. The Exchange also proposes to amend the language in Article VI, Section 2 to clarify that the Nominating and Governance Committee nominates Director candidates and chairpersons to serve on the Board's Committee. Other non-substantive grammatical and stylistic changes are also proposed.

In Article VI, Section 3, the Exchange proposes to amend the Current Bylaws to state that the Exchange Member Nominating Committee is also responsible for nominating candidates for all other vacant or new Exchange Member Director positions on the Board.

#### Officers, Agents and Employees

Article VII of the Current Bylaws state that the officers of the Exchange include a President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, among others. However, the Exchange has not now or ever designated a person to be a President, Vice President, Assistant Secretary, Treasurer or Assistant Treasurer. In addition, the duties enumerated in the Current Bylaws are currently performed by other employees at the Exchange. Specifically, the Chief Executive Officer has general supervision over the operations of the Exchange. In addition, the Chief Executive Officer will delegate to certain Exchange employees the powers and duties usually incident to the

office of President and Vice President in the event of the Chief Executive Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 7 and 8 that refer to the responsibilities of the President and the Vice President since these responsibilities are included within the role of the Chief Executive Officer, which is generally described in Article VII, Section 6.

In addition, the Secretary will delegate to certain Exchange employees the powers and duties usually incident to the office of Secretary in the event of the Secretary's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Section 11 that refers to the responsibilities of the Assistant Secretary. Similarly, the Exchange proposes making a non-substantive stylistic change to move the placement of the reference to the "Secretary" in Article VII, Section 1.

Lastly, the Chief Financial Officer has general supervision over the powers and duties usually incident to the office of the Treasurer. The Board approves the appointment of a Chief Financial Officer in the form of a Board resolution annually. In addition, the Chief Financial Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of Treasurer and Assistant Treasurer in the event of the Chief Financial Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 12 and 13 that refer to the responsibilities of the Treasurer and Assistant Treasurer. Similarly, the Exchange proposes making a conforming amendment to delete the reference to the Treasurer in Article VII, Section 1.

In addition, the Exchange proposes to replace references to the President with the Chief Executive Officer, where applicable, given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. The Exchange's proposed revisions include the following specific amendments:

Article III, Section 7(b) of the Current Bylaws states, "Any Director may resign at any time either upon notice of resignation to the Chairman, the President or the Secretary." The Exchange proposes to replace the reference to "the President" with "the Chief Executive Officer," given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article III, Section 10(a) of the Current Bylaws states, "Special meetings of the Board may be called on a minimum of two (2) days notice to each Director by the Chairman or the President, and shall be called by the Secretary upon the written request of three (3) Directors then in office." The Exchange proposes to replace the reference to "the President" with "the Chief Executive Officer," given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article IV, Section 2 of the Current Bylaws states, "Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or

the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote.” The Exchange proposes to replace the reference to “the President” with the “Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 1 of the Current Bylaws states, “The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer and such other officers as in the Board’s opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person.” The Exchange proposes to delete the references to the Treasurer and to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 3 of the Current Bylaws states, “Any officer may resign at any time upon notice of resignation to the Chairman, the President or the Secretary.” The Exchange proposes to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. In addition, the Exchange proposes to add language stating that an officer may also resign to a designee of the Board, if none such officers are then-appointed, in order to improve the Exchange’s governance framework by providing for an additional option should the Chief Executive Officer or Secretary not be appointed at the time of the officer’s resignation.

In addition, in Article VII, Section 9 (proposed to be re-numbered as Section 7), the Exchange proposes to make conforming amendments to delete the references to “Executive Vice President” or “Senior Vice President” to describe the type of officer that may be designated as the Chief Regulatory Officer.

#### Article XI: Miscellaneous Provisions

In Article XI, Section 7(a) (proposed to be re-numbered as Section 6(a)), the Exchange proposes to specifically identify the persons authorized as signatories of all checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money that are signed in the name of the Exchange. The New Bylaws will state, “All checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate, or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time designate (collectively, the “Authorized Officers”).” The Exchange proposes to make conforming amendments

to the provisions in Article XI, Section 7(b) (proposed to be re-numbered as Section 6(b)) in order to permit any Authorized Officer of the Exchange to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Company.

The Current Bylaws do not address stock certificates and uncertificated shares. Therefore, the Exchange proposes to add Article XI, Section 10 in the New Bylaws to state, “[t]he shares of the Exchange may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Exchange’s stock shall be uncertificated shares. Every holder of stock of the Exchange represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate (if any) shall be signed in a manner that complies with Section 158 of the DGCL.”<sup>2</sup>

#### Miscellaneous Non-Substantive Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Current Bylaws.

The Exchange proposes to include the date that the Current Bylaws were amended on the title page to notify Members of the effective date of the New Bylaws.

The Exchange proposes to re-number various sections of the Current Bylaws in order to eliminate gaps in the numbering and/or lettering of the sections resulting from the proposed revisions as described in Exchange’s rule filing.

The Exchange proposes to delete the defined terms “broker” in Article I, paragraph (d), and “dealer” in Article I, paragraph (j) since neither term is referenced again in the Current Bylaws.

The Exchange proposes to amend the reference to the “Holdings Operating Agreement” in Article I, paragraph (u) (proposed to be re-numbered as paragraph (s)), to notify Members that the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, that was revised on June 12, 2010, is currently in effect.

In Article I, paragraph (v) (proposed to be re-numbered as paragraph (t)), the Exchange proposes to replace the reference to the “EDGA Exchange, Inc.” with “EDGX Exchange, Inc.” to correct a typographical error.

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<sup>2</sup> The DGCL refers to Delaware General Corporation Law.

The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the New Bylaws. Specifically, the Exchange proposes to delete references to the Operational Date in Article I, paragraph (y) and Article XI, Section 1 because the Commission granted the Exchange's registration as a national stock exchange on March 12, 2010.<sup>3</sup> Therefore, these references to the Operational Date are obsolete.

Similarly, the Exchange proposes to delete provisions regarding the initial Board in Article III, Section 2(a), and the initial Nominating and Governance Committee and the initial Exchange Member Nominating Committee in Article VI, Section 1, since these appointments have already occurred. Similarly, the Exchange proposes deleting Exhibits A and B in the Current Bylaws as this information is obsolete. The Exchange proposes to omit Exhibits A and B in the New Bylaws because the Exchange updates this information through the Commission's Form 1 amendment (Exhibits C and J),<sup>4</sup> which is submitted to the Commission within 10 days of a change to the Board of Directors or Committee members.

The Exchange proposes to correct a typographical error in Article I, paragraph (cc) (proposed to be re-numbered as paragraph (z)), by referencing "an" Exchange in the New Bylaws.

The Exchange proposes to correct a typographical error by deleting "and Governance" in Article III, Section 6(b) when identifying the Exchange Member Nominating Committee.

The Exchange proposes to insert "of" and delete "or" in Article IX, Section 3(a) to correct a typographical error. Therefore, the New Bylaws will state, ". . . the trading in, or operation of, the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all Persons or the trading therein of any or all securities . . ." (emphasis added).

In Article XI, Section 9 (proposed to be re-numbered as Section 8), the Exchange proposes to clarify that "PDF or similar transmission," where the receipt can be confirmed, will satisfy the notice requirement.

(b) Statutory Basis

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<sup>3</sup> See also, supra note 1.

<sup>4</sup> The Exchange regularly updates its Form 1 application pursuant to Rule 6a-2 of the Act.

The Exchange believes that its proposal is consistent with the requirements of Section 6(b)(1) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act and Section 6(b)(5)<sup>6</sup> of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

Specifically, the proposed amendments to certain provisions will conform the Current Bylaws with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.<sup>7</sup>

In addition, these proposed amendments will improve efficiency and coordination among the Board and its Committees by revising the Current Bylaws to clearly delineate each Committee's responsibilities. The proposed amendments will also benefit the Exchange and its Members because the New Bylaws will reflect the current governance structure, including the responsibilities of its officers thereby increasing the transparency of this process.

4. 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

6. Extension of Time Period for Commission Action

Not applicable.

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<sup>5</sup> 15 U.S.C. 78f(b)(1).

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

<sup>7</sup> See also, supra note 1.

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>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 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.

As required by Rule 19b-4(f)(6)(iii) under the Act,<sup>10</sup> 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.

EDGA believes that the instant filing is appropriately filed pursuant to Rule 19b-4(f)(6) because the proposed amendments to certain provisions of the Current Bylaws are designed to conform with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.<sup>11</sup>

EDGA 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. EDGA 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 update the Exchange's website, thereby advising Members of the adoption of the New Bylaws and providing an

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

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

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

<sup>11</sup> See also, supra note 1.

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

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

enhanced, more transparent 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>

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

Not applicable.

9. Exhibits

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

Exhibit 5 – Text of Proposed New Bylaws

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGA-2012-17)

[Date]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amend Certain Sections of its Current Bylaws

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 April 25, 2012, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange. 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 certain sections of the Amended and Restated Bylaws of EDGA Exchange, Inc. (the "Current Bylaws") to conform with the Exchange's current corporate governance practices. 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.

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

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

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

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

1. Purpose

The Exchange proposes to amend certain sections of the Current Bylaws to conform with the Exchange's current corporate governance practices. In addition, the Exchange proposes to address other non-substantive revisions to reflect changes since the Securities and Exchange Commission (the "SEC" or the "Commission") granted the Exchange's registration as a national securities exchange in March 2010.<sup>3</sup>

Board of Directors

Article III, Section 5 of the Current Bylaws state that the Chief Executive Officer shall also be the Chairman of the Board of Directors (the "Board"). The Exchange proposes to revise this provision in the New Bylaws to state, "[t]he Directors shall choose among themselves who will be the Chairman of the Board (the "Chairman"), who may also be the Chief Executive Officer," because the Exchange believes separating the two roles is a good corporate governance practice and provides the Board additional flexibility when determining the Chairman. In addition, the Exchange proposes to add clarifying language that states that if the Chief Executive Officer or other member of management of the Exchange is the Chairman, then he or she shall not participate in

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<sup>3</sup> See Securities and Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

executive sessions of the Board. The Exchange believes this amendment helps to preserve the purpose of the executive session, which is for the Board to meet without the Exchange's management present. Similarly, the Exchange proposes to make a conforming amendment to Article VII, Section 6, to provide that the Chief Executive Officer may be the Chairman of the Board.

#### Committees of the Board

The Exchange's Board consists of an Appeals Committee, an Audit Committee, a Compensation Committee, an Executive Committee and a Regulatory Oversight Committee (collectively, the "Board Committees"). In Article V, the Exchange proposes to amend the Current Bylaws to more fully describe the responsibilities of the Board Committees and to be consistent with the provisions of the Board Committees' charters.

In Article V, Section 5(a), the Exchange proposes to amend the Current Bylaws to state that the Compensation Committee is also responsible for assisting the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as a Self Regulatory Organization ("SRO").

In Article V, Section 5(b) (proposed to be re-numbered as Section 5(b)(i) - (vii)), the Exchange proposes to amend the Current Bylaws to state that the Audit Committee is also responsible for assisting the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; taking appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; overseeing all activities of the Exchange's internal audit function, including management's responsiveness to

internal audit recommendations and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, selecting and replacing and determining the compensation of the third party provider), in consultation with management; and overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to amend the language in Article V, Section 5(b)(iv) and (v), respectively, to elaborate on the Audit Committee's responsibility to provide oversight over the systems of internal controls, technology and information integrity established by management and the Board and the Exchange's legal and compliance process as well as to further clarify the Audit Committee's responsibilities around independent auditors.

In Article V, Section 5(c), the Exchange proposes to amend the Current Bylaws to elaborate on the Regulatory Oversight Committee's duties to assist the Board in fulfilling its responsibilities to oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Securities and Exchange Act of 1934 (the "Act"). The Exchange also proposes to amend the language in Article V, Section 5(c) to clarify that the Regulatory Oversight Committee's responsibility to oversee the overall effectiveness of the Exchange's performance of its regulatory functions.

In Article V, Section 5(e), the Exchange proposes to amend the Current Bylaws to clarify that the Executive Committee is also responsible for facilitating coordination of the Board processes among other things.

#### Committees of the Exchange

The Exchange proposes to amend the title of Article VI from “Nominating and Governance Committees” to “Committees of the Exchange” in the New Bylaws because this section includes the Nominating and Governance Committees and the Exchange Member Nominating Committee.

In Article VI, Section 2, the Exchange proposes to amend the Current Bylaws to elaborate on the Nominating and Governance Committee’s responsibilities to develop and recommend governance policies to the Board and to oversee an orientation for new Directors. The Exchange also proposes to amend the language in Article VI, Section 2 to clarify that the Nominating and Governance Committee nominates Director candidates and chairpersons to serve on the Board’s Committee. Other non-substantive grammatical and stylistic changes are also proposed.

In Article VI, Section 3, the Exchange proposes to amend the Current Bylaws to state that the Exchange Member Nominating Committee is also responsible for nominating candidates for all other vacant or new Exchange Member Director positions on the Board.

#### Officers, Agents and Employees

Article VII of the Current Bylaws state that the officers of the Exchange include a President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, among others. However, the Exchange has not now or ever designated a person to be a President, Vice President, Assistant Secretary, Treasurer or Assistant Treasurer. In addition, the duties enumerated in the Current Bylaws are currently performed by other employees at the Exchange. Specifically, the Chief Executive Officer has general supervision over the operations of the Exchange. In addition, the Chief Executive Officer will delegate to certain Exchange employees the powers and duties usually incident to the

office of President and Vice President in the event of the Chief Executive Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 7 and 8 that refer to the responsibilities of the President and the Vice President since these responsibilities are included within the role of the Chief Executive Officer, which is generally described in Article VII, Section 6.

In addition, the Secretary will delegate to certain Exchange employees the powers and duties usually incident to the office of Secretary in the event of the Secretary's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Section 11 that refers to the responsibilities of the Assistant Secretary. Similarly, the Exchange proposes making a non-substantive stylistic change to move the placement of the reference to the "Secretary" in Article VII, Section 1.

Lastly, the Chief Financial Officer has general supervision over the powers and duties usually incident to the office of the Treasurer. The Board approves the appointment of a Chief Financial Officer in the form of a Board resolution annually. In addition, the Chief Financial Officer will delegate to certain Exchange employees the powers and duties usually incident to the office of Treasurer and Assistant Treasurer in the event of the Chief Financial Officer's absence. Therefore, the Exchange proposes deleting the provisions in Article VII, Sections 12 and 13 that refer to the responsibilities of the Treasurer and Assistant Treasurer. Similarly, the Exchange proposes making a conforming amendment to delete the reference to the Treasurer in Article VII, Section 1.

In addition, the Exchange proposes to replace references to the President with the Chief Executive Officer, where applicable, given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of

the Chief Executive Officer. The Exchange's proposed revisions include the following specific amendments:

Article III, Section 7(b) of the Current Bylaws states, "Any Director may resign at any time either upon notice of resignation to the Chairman, the President or the Secretary." The Exchange proposes to replace the reference to "the President" with "the Chief Executive Officer," given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article III, Section 10(a) of the Current Bylaws states, "Special meetings of the Board may be called on a minimum of two (2) days notice to each Director by the Chairman or the President, and shall be called by the Secretary upon the written request of three (3) Directors then in office." The Exchange proposes to replace the reference to "the President" with "the Chief Executive Officer," given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article IV, Section 2 of the Current Bylaws states, "Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote." The Exchange proposes to replace the reference to "the President" with the "Chief Executive Officer," given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 1 of the Current Bylaws states, “The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer and such other officers as in the Board’s opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person.” The Exchange proposes to delete the references to the Treasurer and to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer.

Article VII, Section 3 of the Current Bylaws states, “Any officer may resign at any time upon notice of resignation to the Chairman, the President or the Secretary.” The Exchange proposes to replace the reference to “the President” with “the Chief Executive Officer,” given that the Exchange does not have a President and this is generally one of the powers or duties that is incident to the office of the Chief Executive Officer. In addition, the Exchange proposes to add language stating that an officer may also resign to a designee of the Board, if none such officers are then-appointed, in order to improve the Exchange’s governance framework by providing for an additional option should the Chief Executive Officer or Secretary not be appointed at the time of the officer’s resignation.

In addition, in Article VII, Section 9 (proposed to be re-numbered as Section 7), the Exchange proposes to make conforming amendments to delete the references to “Executive Vice President” or “Senior Vice President” to describe the type of officer that may be designated as the Chief Regulatory Officer.

Article XI: Miscellaneous Provisions

In Article XI, Section 7(a) (proposed to be re-numbered as Section 6(a)), the Exchange proposes to specifically identify the persons authorized as signatories of all checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money that are signed in the name of the Exchange. The New Bylaws will state, “All checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate, or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time designate (collectively, the “Authorized Officers”).” The Exchange proposes to make conforming amendments to the provisions in Article XI, Section 7(b) (proposed to be re-numbered as Section 6(b)) in order to permit any Authorized Officer of the Exchange to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Company.

The Current Bylaws do not address stock certificates and uncertificated shares. Therefore, the Exchange proposes to add Article XI, Section 10 in the New Bylaws to state, “[t]he shares of the Exchange may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Exchange’s stock shall be uncertificated shares. Every holder of stock of the Exchange represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by

such holder registered in certificate form. Each such certificate (if any) shall be signed in a manner that complies with Section 158 of the DGCL.”<sup>4</sup>

#### Miscellaneous Non-Substantive Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Current Bylaws.

The Exchange proposes to include the date that the Current Bylaws were amended on the title page to notify Members of the effective date of the New Bylaws.

The Exchange proposes to re-number various sections of the Current Bylaws in order to eliminate gaps in the numbering and/or lettering of the sections resulting from the proposed revisions as described in Exchange’s rule filing.

The Exchange proposes to delete the defined terms “broker” in Article I, paragraph (d), and “dealer” in Article I, paragraph (j) since neither term is referenced again in the Current Bylaws.

The Exchange proposes to amend the reference to the “Holdings Operating Agreement” in Article I, paragraph (u) (proposed to be re-numbered as paragraph (s)), to notify Members that the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, that was revised on June 12, 2010, is currently in effect.

In Article I, paragraph (v) (proposed to be re-numbered as paragraph (t)), the Exchange proposes to replace the reference to the “EDGA Exchange, Inc.” with “EDGX Exchange, Inc.” to correct a typographical error.

The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the New Bylaws. Specifically, the Exchange proposes

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<sup>4</sup> The DGCL refers to Delaware General Corporation Law.

to delete references to the Operational Date in Article I, paragraph (y) and Article XI, Section 1 because the Commission granted the Exchange's registration as a national stock exchange on March 12, 2010.<sup>5</sup> Therefore, these references to the Operational Date are obsolete.

Similarly, the Exchange proposes to delete provisions regarding the initial Board in Article III, Section 2(a), and the initial Nominating and Governance Committee and the initial Exchange Member Nominating Committee in Article VI, Section 1, since these appointments have already occurred. Similarly, the Exchange proposes deleting Exhibits A and B in the Current Bylaws as this information is obsolete. The Exchange proposes to omit Exhibits A and B in the New Bylaws because the Exchange updates this information through the Commission's Form 1 amendment (Exhibits C and J),<sup>6</sup> which is submitted to the Commission within 10 days of a change to the Board of Directors or Committee members.

The Exchange proposes to correct a typographical error in Article I, paragraph (cc) (proposed to be re-numbered as paragraph (z)), by referencing "an" Exchange in the New Bylaws.

The Exchange proposes to correct a typographical error by deleting "and Governance" in Article III, Section 6(b) when identifying the Exchange Member Nominating Committee.

The Exchange proposes to insert "of" and delete "or" in Article IX, Section 3(a) to correct a typographical error. Therefore, the New Bylaws will state, ". . . the trading

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<sup>5</sup> See also, supra note 3.

<sup>6</sup> The Exchange regularly updates its Form 1 application pursuant to Rule 6a-2 of the Act.

in, or operation of, the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all Persons or the trading therein of any or all securities . . .”

(emphasis added).

In Article XI, Section 9 (proposed to be re-numbered as Section 8), the Exchange proposes to clarify that “PDF or similar transmission,” where the receipt can be confirmed, will satisfy the notice requirement.

2. Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b)(1) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act and Section 6(b)(5)<sup>8</sup> of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

Specifically, the proposed amendments to certain provisions will conform the Current Bylaws with the Exchange’s current corporate governance practices. In addition, the Exchange’s proposed amendments address other non-substantive revisions to reflect

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<sup>7</sup> 15 U.S.C. 78f(b)(1).

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

changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.<sup>9</sup>

In addition, these proposed amendments will improve efficiency and coordination among the Board and its Committee's by revising the Current Bylaws to clearly delineate each Committee's responsibilities. The proposed amendments will also benefit the Exchange and its Members because the New Bylaws will reflect the current governance structure, including the responsibilities of its officers thereby increasing the transparency of this process.

B. 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.

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 change.

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>10</sup> of the Act and Rule 19b-4(f)(6)<sup>11</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B)

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<sup>9</sup> See also, supra note 3.

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

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

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>12</sup>

EDGA believes that the instant filing is appropriately filed pursuant to Rule 19b-4(f)(6) because the proposed amendments to certain provisions of the Current Bylaws are designed to conform with the Exchange's current corporate governance practices. In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange in March 2010.<sup>13</sup>

EDGA 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>14</sup> of the Act and Rule 19b-4(f)(6)<sup>15</sup> thereunder. EDGA believes that such waiver is consistent with

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

<sup>13</sup> See also, supra note 3.

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

the protection of investors and the public interest because it will enable the Exchange to immediately implement the proposed rule changes, and update the Exchange's website, thereby advising Members of the adoption of the New Bylaws and providing an enhanced, more transparent 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>16</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 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-EDGA-2012-17 on the subject line.

##### Paper comments:

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

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<sup>16</sup> 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-EDGA-2012-17. 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 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-EDGA-2012-17 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>17</sup>

Secretary

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

**Exhibit 5**Additions double underlined

Deletions [bracketed]

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

**As of April 1, 2012**

**ARTICLE I**

**Definitions**

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

(a) - (c) No changes.

[(d) "broker" shall have the meaning set forth in Section 3(a)(4) of the Act.]

[(e)d] "Business Day" shall mean a day other than Saturday or Sunday on which commercial banks in New York are not required or permitted under applicable laws or regulations to close.

[(f)e] "Chairman" shall have the meaning set forth in Article III, Section 5.

[(g)f] "Commission" means the United States Securities and Exchange Commission.

[(h)g] "Company" means EDGA Exchange, Inc., a Delaware corporation.

[(i)h] "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings.

[(j) "dealer" shall have the meaning set forth in Section 3(a)(5) of the Act.]

[(k)(i) "Designating Owner" shall mean a member of Direct Edge Holdings that holds (together with its Affiliates) at least a 15% Percentage Interest (as defined in the Holdings Operating Agreement) in Direct Edge Holdings.

[(l)j] "DGCL" means the General Corporation Law of the State of Delaware.

([m]k) “Direct Edge Holdings” means Direct Edge Holdings LLC, a Delaware limited liability company.

([n]l) “Direct Edge” means Direct Edge, Inc., a Delaware corporation, that is a wholly owned subsidiary of Direct Edge Holdings.

([o]m) “Director” means the persons elected to the Board from time to time in accordance with these Bylaws.

([p]n) “Exchange” means the national securities exchange operated by the Company.

([q]o) “Exchange Member” means any registered broker or dealer that has been admitted to membership in the Exchange. An Exchange Member is not a stockholder of the Company by reason of being an Exchange Member. An Exchange Member shall have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.

([r]p) “Exchange Member Director” means an officer, director, employee or agent of an Exchange Member, other than an Owner Exchange Member, who is elected as a Director in accordance with Article III, Section 4.

([s]q) “Exchange Member Nominating Committee” means the Exchange Member Nominating Committee elected pursuant to these Bylaws.

([t]r) “Exchange Member Representative” means the person identified to the Company by an Exchange Member as the individual authorized to represent, vote and act on behalf of the Exchange Member. An Exchange Member may change its Exchange Member Representative or appoint a substitute for its Exchange Member Representative upon giving notice thereof to the Secretary of the Company. An Exchange Member Representative of an Exchange Member or a substitute shall be a member of senior management and registered principal of the Exchange Member.

([u]s) “Holdings Operating Agreement” means the [Fourth] Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, dated as of [April 13] June 12, 2010, by and among the members of Direct Edge Holdings, as such Agreement may be amended from time to time.

([v]t) “Independent Director” means a Director who has no material relationship with (i) the Company or any Affiliate of the Company, or (ii) any Exchange Member or any Affiliate of any Exchange Member; *provided*, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company, Direct Edge, Direct Edge Holdings or [EDGA]EDGX Exchange, Inc.

([w]u) “List of Candidates” shall have the meaning set forth in Article III, Section 4(e).

([x]v) “Nominating and Governance Committee” means the Nominating and Governance

Committee elected pursuant to these Bylaws.

[(y)] “Operational Date” shall have the meaning set forth in Article XI, Section 1.]

[(z)]~~(w)~~ “Owner Director” shall mean a Director nominated by a Designating Owner pursuant to Article III, Section 4(g) and elected by the stockholders of the Company.

[(aa)]~~(x)~~ “Owner Exchange Member” means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company.

[(bb)]~~(y)~~ “Person” means any individual, partnership, joint stock company, corporation, entity, association, trust, limited liability company, joint venture, unincorporated organization, and any government, governmental department or agency or political subdivision of any government.

[(cc)]~~(z)~~ “person associated with an Exchange Member” or “associated person of an Exchange Member” means any partner, officer, director, or branch manager of an Exchange Member (or other person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with, such Exchange Member or any employee of such Exchange Member, except that any person associated with an Exchange Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Bylaws.

[(dd)]~~(aa)~~ “Petition Candidates” shall have the meaning set forth in Article III, Section 4(c).

[(ee)]~~(bb)~~ “Petition Date” means a date at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders.

[(ff)]~~(cc)~~ “Petition Deadline” shall have the meaning set forth in Article III, Section 4(c).

[(gg)]~~(dd)~~ “registered broker or dealer” means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

[(hh)]~~(ee)~~ “Rules” or “Exchange Rules” shall have the same meaning as set forth in Section 3(a)(27) of the Act, with respect to the Company.

[(ii)]~~(ff)~~ “SRO” means a “self-regulatory organization” as defined in Section 3(a)(26) of the Act.

[(jj)]~~(gg)~~ “statutory disqualification” shall have the meaning set forth in Section 3(a)(39) of the Act.

[(kk)]~~(hh)~~ “stockholder” means any Person who maintains a direct ownership interest in the Company. The sole stockholder of the Company shall be Direct Edge.

Definitions in these Bylaws apply equally to both the singular and plural forms of the defined terms. The terms “include” and “including” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to these Bylaws as a whole and not to any particular section or subsection. The headings appear as a matter of convenience only and shall not affect the interpretation of these Bylaws.

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### **ARTICLE III**

#### **Board of Directors**

**Section 1.**     Powers

(a)-(e)        No changes.

**Section 2.**     Composition of the Board

(a)     Subject to Article III, Sections 2(b), 4(g) and 6(a), the Board shall consist of nineteen (19) Directors. A majority of the directorships shall be Independent Directors. The Board shall be comprised initially as follows:

- (i)    The Chief Executive Officer of the Company;
- (ii)   Four (4) Owner Directors (subject to increase or decrease pursuant to Article III, Section 2(b) and Section 4(g));
- (iii)   Ten (10) Independent Directors (subject to increase or decrease pursuant to Article III, Section 2(b)); and
- (iv)   Four (4) Exchange Member Directors (subject to increase or decrease pursuant to Article III, Section 2(b)).

[The initial Board as of the date hereof is as set forth on Exhibit A and each] Each [d] Director shall serve until his or her term expires as provided in Article III, Section 3.

(b)-(d)        No changes.

**Sections 3-4**        No changes.

**Section 5.**     Chairman of the Board

The [Chief Executive Officer] Directors shall choose among themselves who will be the Chairman of the Board (the “Chairman”)[.], who may also be the Chief Executive Officer. The Chairman shall preside at all meetings of the Board at which the Chairman is present; *provided*, however, that if the Chairman is the Chief Executive Officer or other member of management of

the Company, he or she shall not participate in executive sessions of the Board. The Chairman shall exercise such other powers and perform such other duties as may be assigned to the Chairman from time to time by the Board. The Board shall designate a Lead Director from among the Board's Independent Directors to preside over executive sessions of the Board. The Board shall publicly disclose the identity of the Lead Director and the means by which interested parties may communicate with the Lead Director.

**Section 6.**     Vacancies

(a)           No changes.

(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

(c)           No changes.

**Section 7.**     Removal and Resignation

(a)           No changes.

(b)           Any Director may resign at any time either upon notice of resignation to the Chairman, the [President] Chief Executive Officer or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Sections 8-9**           No changes.

**Section 10.**    Special Meetings

(a)           Special meetings of the Board may be called on a minimum of two (2) days notice to each Director by the Chairman or the [President] Chief Executive Officer, and shall be called by the Secretary upon the written request of three (3) Directors then in office.

(b) No change.

**Sections 11-16** No changes.

#### **ARTICLE IV**

#### **STOCKHOLDERS**

**Section 1.** No changes.

**Section 2.** Special Meetings

Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the [President]Chief Executive Officer, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, 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. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

**Sections 3-6.** No changes.

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#### **ARTICLE V**

#### **Committees of the Board**

**Sections 1-4** No changes.

**Section 5.** Specified Committees

(a) The Board, after consultation with the Chairman, shall designate the members of a Compensation Committee, which shall consist of three Independent Directors. The Compensation Committee shall consider and recommend compensation policies, programs and practices for officers and other employees of the Company and shall assist the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as an SRO. The Board, after consultation with the Chairman, may designate non-voting observers who shall be permitted to attend and participate in committee meetings.

(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]i) assist the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Company; (ii) take appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; (iii) provide oversight over the Company's financial reporting process and the financial information that is provided to stockholders, regulatory authorities and others; ([B]iv) provide oversight over the systems of internal controls, technology and information integrity established by management and the Board and the Company's legal and compliance process; ([C]v) 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]any independent auditors retained by the Company to perform internal or other audit functions directly for the Company; (vi) oversee all activities of the Company's internal audit function, including management's responsiveness to internal audit recommendations and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, selecting and replacing and determining the compensation of the third party provider), in consultation with management; and (vii) oversee enterprise risk and technology operations, including security and business continuity measures. 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) The Board, after consultation with the Chairman, shall designate the members of a Regulatory Oversight Committee, which shall consist solely of Independent Directors. The Regulatory Oversight Committee shall assist the Board in fulfilling its responsibilities to oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Exchange Act; assess the Exchange's regulatory performance and assist the Board and committees of the Board in reviewing the regulatory plan; and oversee the overall effectiveness of the Exchange's performance of its regulatory functions.

(d) No changes.

(e) The Board, after consultation with the Chairman, may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of

the business and affairs of the Company between meetings of the Board and to facilitate coordination of Board processes. The percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board.

## **ARTICLE VI**

### **[Nominating and Governance Committees]**

#### **Committees of the Exchange**

##### **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] 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] be responsible for (a) developing and recommending governance policies to the Board; (b) nominating 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]; (c) nominating Director candidates and chairpersons to serve on [the] committees of the Board; [overseeing] and (d) overseeing an annual self-evaluation of the independent Directors and each Board committee. The Nominating and Governance Committee shall also oversee the implementation and effectiveness of the [By-laws]Bylaws, committee charters, policies and other governance documents as needed; review[ing] and recommend[ing] best practices in corporate governance; and oversee[ing] an [annual self-evaluation of the independent] orientation for new 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.**     Exchange Member Nominating Committee

The Exchange Member Nominating Committee shall nominate candidates for each Exchange Member Director position on the Board that is to be elected by Exchange Members or stockholders under the terms of these Bylaws and all other vacant or new Exchange Member Director positions on the Board. Each member of the Exchange Member Nominating Committee shall qualify as an Exchange Member Director, except that such committee member is not required to be a Director. Upon request of the Secretary, any such prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification. The Secretary shall certify to the Board such prospective committee member's classification. Such committee member 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.

**ARTICLE VII**

**Officers, Agents and Employees**

**Section 1.**     General

The officers of the Company shall include a Chief Executive Officer[, a President,] and a Chief Regulatory Officer,[ a Secretary, a Treasurer] and such other officers (including a Secretary) as in the Board's opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the [President] Chief Executive Officer and Secretary may not be held by the same person.

**Section 2.**     No changes.

**Section 3.**     Resignation and Removal of Officers; Vacancies

(a) Any officer may resign at any time upon notice of resignation to the Chairman, the [President] Chief Executive Officer or the Secretary, or a designee of the Board, if none such officers are then-appointed. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

(b) No changes.

**Sections 4-5**         No changes.

**Section 6. Chief Executive Officer**

The Chief Executive Officer [shall be the Chairman of the Board and shall preside at all meetings of the Board at which the Chief Executive Officer is present; *provided*, however, that he or she shall not participate in executive sessions] may be the Chairman of the Board. The Chief Executive Officer shall be the chief executive officer of the Company, shall have general supervision over the business and affairs of the Company, and shall serve at the pleasure of the Board. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

**[Section 7. President**

The President shall, in the absence of the Chairman and Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Company. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.]

**[Section 8. Vice President**

The Board shall appoint one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President and Vice President.]

**Section 7[9.] Chief Regulatory Officer**

[An officer of the Company with the position of Executive Vice President or Senior Vice President shall be designated as the Chief Regulatory Officer of the Company.] The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Company, including responsibility for overseeing the Company's surveillance, examination and enforcement functions and for administering any regulatory services agreements with another SRO to which the Company is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Company in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may, but is not required to, also serve as the General Counsel of the Company.

**Section [10]8. Secretary**

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Company, and shall have supervision over the care and custody of the books and records of the Company. The Secretary shall be empowered to affix the Company's seal, if any, to documents, the execution of which on behalf of the Company under its seal is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer [or the President].

**[Section 11. Assistant Secretary**

In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.]

**[Section 12. Treasurer**

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Company. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.]

**[Section 13. Assistant Treasurer**

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.]

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**ARTICLE IX****Amendments; Emergency Bylaws**

**Sections 1-2** No changes.

**Section 3. Authority to Take Action Under Extraordinary Market Conditions**

The Board, or such Person or Persons as may be designated by the Board, in the event of extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in, or operation of, the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system [or] of any or all Persons or the trading therein of any or all securities; and

(b) No changes.

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**ARTICLE XI****Miscellaneous Provisions****[Section 1. Operational Date of Exchange**

The Company has been formed in anticipation of its registration by the Commission as a national securities exchange. During the period between incorporation and the first date on which the Company commences operating a national securities exchange (the "Operational Date"):

(a) references in these Bylaws to "the national securities exchange operated by the Company" or the "Exchange" shall be construed as references to "the national securities exchange to be operated by the Company"; and

(b) the Board may appoint members of the committees to be established under these Bylaws, but shall not be required to appoint all such committee members until the date immediately prior to the Operational Date.]

**Section [2]1. Fiscal Year**

The fiscal year of the Company shall be as determined from time to time by the Board.

**Section [3]2. Participation in Board and Committee Meetings**

All meetings of the Board (and any committees of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters) shall be closed to all Persons other than Directors and officers, employees, agents or advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Managers of Direct Edge Holdings who are not also members of the Board, Directors of Direct Edge who are not also members of the Board, or any officers, employees, agents or advisors of Direct Edge or Direct Edge Holdings who are not also officers, employees, agents or advisors of the Company (or any

committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters).

**Section [4]3. Books and Records; Confidentiality of Information and Records Relating to SRO Function**

The books and records of the Company shall be maintained at a location within the United States. All books and records of the Company reflecting confidential information pertaining to the self-regulatory function of the Company (including disciplinary matters, trading data, trading practices and audit information) and the information contained in those books and records shall be retained in confidence by the Company and the Directors, officers, employees, hearing officers, other agents and advisors of the Company, shall not be used by the Company for any non-regulatory purposes and shall not be made available to any Person (including any Exchange Member) other than to personnel of the Commission, and those Directors, officers, employees, hearing officers, other agents and advisors of the Company, to the extent necessary or appropriate to discharge properly the self-regulatory responsibilities of the Company.

**Section [5]4. Dividends**

Subject to any provisions of any applicable statute, other provisions of these Bylaws or the Certificate of Incorporation, dividends may be declared upon the capital stock of the Company by, and in the absolute discretion of, the Board; and any such dividends may be paid in cash, property or shares of stock of the Company, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board.

**Section [6]5. Reserves**

Before payment of any dividends, there may be set aside out of any funds of the Company available for dividends such sum or sums as the Board from time to time, in its absolute discretion, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for such other purpose as the Board shall determine to be conducive to the interests of the Company, and the Board may modify or abolish any such reserve in the manner in which it was created.

**Section [7]6. Execution of Instruments, Contracts, etc.**

(a) All checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate[.], or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time designate (collectively, the "Authorized Officers"). Except as otherwise provided by applicable law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board may authorize any [officer, employee or agent]Authorized Officer, in the name of and on behalf of the Company, to enter into or execute

and deliver deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority may be executed in the name of the Company by any [officer of the Company, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Company. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons] Authorized Officer of the Company.

**Section [8]7.** Power to Vote Stock

Unless otherwise instructed by the Board, the Chief Executive Officer of the Company shall have the power and authority on behalf of the Company to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity in which the Company may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Company any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Company in connection with the exercise by the Company of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

**Section [9]8.** Notices

Unless otherwise provided in these Bylaws or the DGCL, any and all notices contemplated by these Bylaws shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy or electronic "PDF" or similar transmission (receipt confirmed [by one of the other methods for providing notice set forth herein]), or one (1) Business Day after being sent, postage prepaid, by nationally recognized overnight courier (*e.g.*, Federal Express), or five (5) Business Days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. Notices of special meetings of Directors shall be given to each Director at his or her business address or such other address as he or she may have advised the Secretary to use for such purpose.

**Section [10]9.** Severability

If any provision of these Bylaws, or the application of any provision of these Bylaws to any Person or circumstances, is held invalid, the remainder of these Bylaws and the application of such provision to other Persons or circumstances shall not be affected.

**Section 10.** Stock Certificates; Uncertificated Shares

The shares of the Company may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Company's stock shall be uncertificated shares. Every holder of stock of the Company represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by

the Board, representing the number of shares held by such holder registered in certificate form.  
Each such certificate (if any) shall be signed in a manner than complies with Section 158 of the  
DGCL.

**[EXHIBIT A****Initial Directors**

Name	Type of Director	Class
William O'Brien	Chief Executive Officer	NA
Leonard Amoruso	Owner Director	I
Michael Simon	Owner Director	I
Martin Mannion	Owner Director	II
Greg Tusar	Owner Director	III
James Angel	Independent Director	I
Steven Brodsky	Independent Director	I
William Dailey	Independent Director	I
Scott Ganeles	Independent Director	II
Patrick Healy	Independent Director	II
Samuel Miller	Independent Director	II
Mark Minister	Independent Director	III
George Munoz	Independent Director	III
Richard Schenkman	Independent Director	III
Larry Bergmann	Independent Director	III
Noel Dalzell	Exchange Member Director	I
Brian Fagen	Exchange Member Director	II
Suhas Daftuar	Exchange Member Director	III
Richard Gorelick	Exchange Member Director	II

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

Name
Richard Schenkman
Samuel Miller
William Dailey

**Initial Exchange Member Nominating Committee**

Name
Noel Dalzell
Richard Gorelick
Suhas Daftuar

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