

## OMB APPROVAL

OMB Number: 3235-0045  
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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 20

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2012 - \* 43

Amendment No. (req. for Amendments \*)

Proposed Rule Change by EDGA Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

EDGA Exchange, Inc. proposes to amend Rule 2.11 describing the circumstances of the operation of an error account for the routing broker-dealer, Direct Edge ECN d/b/a DE Route.

### 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 \* Jeffrey Last Name \* Rosenstock  
 Title \* General Counsel  
 E-mail \* jrosenstock@directedge.com  
 Telephone \* (201) 942-8295 Fax

### 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 09/24/2012

By Jeffrey S. Rosenstock  
 (Name \*)

General Counsel

(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.

jrosenstock@directedge.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

Add Remove View

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

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

Add Remove View

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

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

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Exhibit Sent As Paper Document

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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

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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**

Add Remove View

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

**Partial Amendment**

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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 Change

- (a) EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to amend Rule 2.11(a)(7) to describe the circumstances under which the Exchange’s routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route (“DE Route”),<sup>1</sup> would be authorized to liquidate an error position resulting from one or more erroneous executions on the Exchange attributable to a systems, technical or operational issue (referred to herein as a “Systems Issue”) experienced by the Exchange. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office and at the Public Reference Room of the Commission.
- (b) The Exchange does not believe that the proposed rule change will have any direct or 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 Exchange’s Board of Directors approved the proposed rule change on December 12, 2011. This action constitutes the requisite approval under the Exchange’s By-Laws and no other action is necessary for the filing of the proposed rule change. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

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

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

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

(a) Purpose

Background

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<sup>1</sup> DE Route is a facility of the Exchange. Accordingly, under Exchange Rule 2.11(a)(1), the Exchange is responsible for filing with the Securities and Exchange Commission (the “Commission”) rule changes and fees relating to DE Route’s outbound router function, and its authorized functions are limited to those enumerated in Rule 2.11(a)(4).

DE Route is the approved Outbound Router<sup>2</sup> of EDGA, subject to the conditions contained in Rule 2.11. EDGA relies on DE Route to provide outbound routing services from EDGA to external market centers (each, a “Trading Center”<sup>3</sup>). The Exchange has also been approved to receive inbound routes of equities orders by DE Route from EDGX Exchange, Inc. for a pilot period ending on June 30, 2013.<sup>4</sup>

In addition to the foregoing, DE Route, as well as the Exchange, is authorized under Rule 2.11(a)(6) to cancel orders when a Systems Issue occurs, and is authorized under Rule 2.11(a)(7), in connection with its role as an Outbound Router of EDGA, to maintain an error account for the purpose of liquidating an error position acquired as a result of a Systems Issue experienced either by DE Route, the Exchange or a Trading Center to which DE Route directed an outbound order.<sup>5</sup> In this regard, DE Route may only assume such a position in the error account under documented circumstances when such position could not fairly and practicably be assigned to one or more Members in its entirety.<sup>6</sup>

Proposed Amendment to Exchange Rule 2.11(a)(7)

The Exchange is now proposing to amend Rule 2.11(a)(7) to describe the circumstances under which DE Route would be authorized to use the error account to liquidate an error position resulting from an erroneous execution on the Exchange that was attributable to a Systems Issue, and not just an error position

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<sup>2</sup> As defined in EDGA Rule 2.11(a). See also Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (order approving the registration of EDGA as a national securities exchange).

<sup>3</sup> As defined in EDGA Rule 2.11(a) and Rule 600(b)(78) of Regulation NMS under the Securities Exchange Act of 1934 (the “Act”), 17 CFR 242.600(b)(78).

<sup>4</sup> See Securities Exchange Act Release No. 66643 (March 22, 2012), 77 FR 18876 (March 28, 2012) (SR-EDGA-2012-10) (extending the pilot period of the Inbound Router as described in EDGA Rule 2.12(b) through June 30, 2013). See also Securities Exchange Act Release No. 64362 (April 28, 2011), 76 FR 25386 (May 4, 2011) (SR-EDGA-2011-13) (extending the pilot period through June 30, 2012).

<sup>5</sup> See Securities Exchange Act Release No. 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR-EDGA-2012-09) (order approving amendments to Rule 2.11 that establish the Exchange’s and DE Route’s authority to cancel orders and describe the operation of an error account).

<sup>6</sup> See EDGA Rule 2.11(a)(7). See also supra note 5 for a description of the requirements applicable to DE Route relating, among other things, to: (i) determining whether an error position can be fairly and practicably assigned to one or more Members in its entirety; and (ii) the manner in which an error position acquired in the error account shall be liquidated.

acquired in connection with its role as Outbound Router. In this regard, the proposed rule change would specify that an error position would not include any position that resulted from an order submitted by a Member to EDGA that was executed on EDGA and automatically processed for clearance and settlement on a locked-in basis. DE Route would not be permitted to: (i) accept a position in the error account from a Member's account; or (ii) permit any Member to transfer any position from the Member's account to the error account. In other words, DE Route would not be permitted to accept from a Member a position that was delivered to the Member through the clearance and settlement process, even if such position may have been related to a Systems Issue on EDGA. If a Member received a locked-in position in connection with a Systems Issue and experienced a loss in unwinding such position, that Member would be able to seek reimbursement from the Exchange in accordance with, and subject to the limitations of, Exchange Rule 11.12(d), which provides Members with the ability to file claims against the Exchange "for losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees." If, however, a Systems Issue resulted in the Exchange not having valid clearing instructions for a Member to a trade, DE Route would be permitted to assume that Member's side of the trade so that the trade could be automatically processed for clearance and settlement on a locked-in basis.

In the addition to the foregoing, the Exchange proposes to amend Rule 2.11(a)(7) to clarify that either the Exchange or DE Route, or both, are authorized to make a determination as to whether an error position can be fairly and practicably assigned to one or more Members, or alternatively, to make a determination as to whether an error position shall be acquired in DE Route's error account to be liquidated, in either case in accordance with the provisions of Rule 2.11(a)(7).

#### Circumstances That Could Lead to an Error Position

An error position may result from a Systems Issue at the Exchange that does not involve routing of orders through DE Route. For example, a situation may arise in which a posted quote/order validly cancelled by the System<sup>7</sup> erroneously matched that quote/order with an order that was seeking to access it. In such a situation, DE Route would have to assume that side of the trade opposite the order seeking to access the cancelled quote/order. DE Route would post the position in its error account and resolve the position in the manner described in Rule 2.11(a)(7).

An error position may also result from a Systems Issue whereby the Exchange does not receive sufficient notice that a Member that has executed trades on the Exchange has lost the ability to clear trades through The Depository Trust Clearing Corporation. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically

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<sup>7</sup>

As defined in EDGA Rule 1.5(cc).

processed for clearance and settlement on a locked-in basis. Accordingly, DE Route would assume that Member's side of the trade so that the counterparty could settle the trade. DE Route would post such an error position into its error account and resolve the position in the manner described in Rule 2.11(a)(7).

The Exchange notes that this discussion of potential scenarios that could lead to an error position is for illustrative purposes only and is not intended to be an exhaustive list of all scenarios.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act (the "Act")<sup>8</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Similar to the Exchange's previous proposal to authorize DE Route to maintain an error account for the purpose of addressing and resolving an error position acquired in connection with its role as an Outbound Router,<sup>10</sup> the Exchange continues to believe that allowing DE Route to assume an error position in the error account, and to liquidate such position in accordance with the conditions set forth in Rule 2.11(a)(7), is the least disruptive means to resolve an error position, except where it is fair and practicable for DE Route to assign the entire amount of such error position to one or more Members of the Exchange; ensures full trade certainty for market participants; and avoids disrupting the clearance and settlement process. The proposed amendment to Rule 2.11(a)(7) would extend these principles to circumstances where an error position resulted from one or more erroneous executions on the Exchange due to a Systems Issue experienced by the Exchange, and not solely under circumstances where DE Route was acting as the Exchange's Outbound Router. Thus, regardless whether the error position resulted from an execution on the Exchange or at a Trading Center,<sup>11</sup> Rule 2.11(a)(7) would continue to provide a consistent methodology for handling such error position in a manner that did not discriminate among Members, and would

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra note 5, at 4.

<sup>11</sup> As defined in EDGA Rule 2.11(a).

continue to require DE Route to establish controls reasonably designed to restrict the flow of any confidential information associated with the liquidation of an error position.

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

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

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

The Exchange has neither solicited nor received written comments on this proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change is effective pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>14</sup> The Exchange has satisfied this requirement.

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

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

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

The Exchange submits that the instant filing is non-controversial in that it does not present any policy issue that has not been previously considered by the Commission. Specifically, DE Route's proposed use of its error account to resolve an error position resulting from one or more erroneous executions on the Exchange due to a Systems Issue experienced by the Exchange is substantially similar to provisions proposed by The NASDAQ Stock Market LLC ("NASDAQ") and NYSE Arca, Inc. ("Arca") that were approved by the Commission.<sup>15</sup>

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

The proposed rule change is based on and materially identical to similar provisions contained in NASDAQ Equity Rule 4758(d)(2) and Arca Equities Rule 7.45(d)(2).

9. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change.

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<sup>15</sup> See Securities Exchange Act Release No. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR-NASDAQ-2012-057) (order approving proposed rule change to amend NASDAQ Equity Rule 4758 to address the authority of NASDAQ or NASDAQ Execution Services to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for NASDAQ Execution Services). See also Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22) (order approving proposed rule change to amend Arca Equities Rule 7.45 to address the authority of Arca or Archipelago Securities LLC to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Archipelago Securities).



EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ); File No. SR-EDGA-2012-43

[Date]

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to Rule 2.11

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 25, 2012, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "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

EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend Rule 2.11(a)(7) to describe the circumstances under which the Exchange's routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route ("DE Route"),<sup>3</sup> would be authorized to liquidate an error position resulting from one or more erroneous executions on the

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

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

<sup>3</sup> DE Route is a facility of the Exchange. Accordingly, under Exchange Rule 2.11(a)(1), the Exchange is responsible for filing with the Securities and Exchange Commission (the "Commission") rule changes and fees relating to DE Route's outbound router function, and its authorized functions are limited to those enumerated in Rule 2.11(a)(4).

Exchange attributable to a systems, technical or operational issue (referred to herein as a “Systems Issue”) experienced by the Exchange. 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 the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

Purpose

Background

DE Route is the approved Outbound Router<sup>4</sup> of EDGA, subject to the conditions contained in Rule 2.11. EDGA relies on DE Route to provide outbound routing services from EDGA to external market centers (each, a “Trading Center”<sup>5</sup>). The Exchange has

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<sup>4</sup> As defined in EDGA Rule 2.11(a). See also Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (order approving the registration of EDGA as a national securities exchange).

<sup>5</sup> As defined in EDGA Rule 2.11(a) and Rule 600(b)(78) of Regulation NMS under the Securities Exchange Act of 1934 (the “Act”), 17 CFR 242.600(b)(78).

also been approved to receive inbound routes of equities orders by DE Route from EDGX Exchange, Inc. for a pilot period ending on June 30, 2013.<sup>6</sup>

In addition to the foregoing, DE Route, as well as the Exchange, is authorized under Rule 2.11(a)(6) to cancel orders when a Systems Issue occurs, and is authorized under Rule 2.11(a)(7), in connection with its role as an Outbound Router of EDGA, to maintain an error account for the purpose of liquidating an error position acquired as a result of a Systems Issue experienced either by DE Route, the Exchange or a Trading Center to which DE Route directed an outbound order.<sup>7</sup> In this regard, DE Route may only assume such a position in the error account under documented circumstances when such position could not fairly and practicably be assigned to one or more Members in its entirety.<sup>8</sup>

Proposed Amendment to Exchange Rule 2.11(a)(7)

The Exchange is now proposing to amend Rule 2.11(a)(7) to describe the circumstances under which DE Route would be authorized to use the error account to liquidate an error position resulting from an erroneous execution on the Exchange that was attributable to a Systems Issue, and not just an error position acquired in connection

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<sup>6</sup> See Securities Exchange Act Release No. 66643 (March 22, 2012), 77 FR 18876 (March 28, 2012) (SR-EDGA-2012-10) (extending the pilot period of the Inbound Router as described in EDGA Rule 2.12(b) through June 30, 2013). See also Securities Exchange Act Release No. 64362 (April 28, 2011), 76 FR 25386 (May 4, 2011) (SR-EDGA-2011-13) (extending the pilot period through June 30, 2012).

<sup>7</sup> See Securities Exchange Act Release No. 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR-EDGA-2012-09) (order approving amendments to Rule 2.11 that establish the Exchange's and DE Route's authority to cancel orders and describe the operation of an error account).

<sup>8</sup> See EDGA Rule 2.11(a)(7). See also supra note 7 for a description of the requirements applicable to DE Route relating, among other things, to: (i) determining whether an error position can be fairly and practicably assigned to one or more Members in its entirety; and (ii) the manner in which an error position acquired in the error account shall be liquidated.

with its role as Outbound Router. In this regard, the proposed rule change would specify that an error position would not include any position that resulted from an order submitted by a Member to EDGA that was executed on EDGA and automatically processed for clearance and settlement on a locked-in basis. DE Route would not be permitted to: (i) accept a position in the error account from a Member's account; or (ii) permit any Member to transfer any position from the Member's account to the error account. In other words, DE Route would not be permitted to accept from a Member a position that was delivered to the Member through the clearance and settlement process, even if such position may have been related to a Systems Issue on EDGA. If a Member received a locked-in position in connection with a Systems Issue and experienced a loss in unwinding such position, that Member would be able to seek reimbursement from the Exchange in accordance with, and subject to the limitations of, Exchange Rule 11.12(d), which provides Members with the ability to file claims against the Exchange "for losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees." If, however, a Systems Issue resulted in the Exchange not having valid clearing instructions for a Member to a trade, DE Route would be permitted to assume that Member's side of the trade so that the trade could be automatically processed for clearance and settlement on a locked-in basis.

In the addition to the foregoing, the Exchange proposes to amend Rule 2.11(a)(7) to clarify that either the Exchange or DE Route, or both, are authorized to make a determination as to whether an error position can be fairly and practicably assigned to one or more Members, or alternatively, to make a determination as to whether an error

position shall be acquired in DE Route's error account to be liquidated, in either case in accordance with the provisions of Rule 2.11(a)(7).

#### Circumstances That Could Lead to an Error Position

An error position may result from a Systems Issue at the Exchange that does not involve routing of orders through DE Route. For example, a situation may arise in which a posted quote/order validly cancelled by the System<sup>9</sup> erroneously matched that quote/order with an order that was seeking to access it. In such a situation, DE Route would have to assume that side of the trade opposite the order seeking to access the cancelled quote/order. DE Route would post the position in its error account and resolve the position in the manner described in Rule 2.11(a)(7).

An error position may also result from a Systems Issue whereby the Exchange does not receive sufficient notice that a Member that has executed trades on the Exchange has lost the ability to clear trades through The Depository Trust Clearing Corporation. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, DE Route would assume that Member's side of the trade so that the counterparty could settle the trade. DE Route would post such an error position into its error account and resolve the position in the manner described in Rule 2.11(a)(7).

The Exchange notes that this discussion of potential scenarios that could lead to an error position is for illustrative purposes only and is not intended to be an exhaustive list of all scenarios.

#### Basis

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<sup>9</sup> As defined in EDGA Rule 1.5(cc).

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Similar to the Exchange's previous proposal to authorize DE Route to maintain an error account for the purpose of addressing and resolving an error position acquired in connection with its role as an Outbound Router,<sup>12</sup> the Exchange continues to believe that allowing DE Route to assume an error position in the error account, and to liquidate such position in accordance with the conditions set forth in Rule 2.11(a)(7), is the least disruptive means to resolve an error position, except where it is fair and practicable for DE Route to assign the entire amount of such error position to one or more Members of the Exchange; ensures full trade certainty for market participants; and avoids disrupting the clearance and settlement process. The proposed amendment to Rule 2.11(a)(7) would extend these principles to circumstances where an error position resulted from one or more erroneous executions on the Exchange due to a Systems Issue experienced by the Exchange, and not solely under circumstances where DE Route was acting as the

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See supra note 7, at 11.

Exchange's Outbound Router. Thus, regardless whether the error position resulted from an execution on the Exchange or at a Trading Center,<sup>13</sup> Rule 2.11(a)(7) would continue to provide a consistent methodology for handling such error position in a manner that did not discriminate among Members, and would continue to require DE Route to establish controls reasonably designed to restrict the flow of any confidential information associated with the liquidation of an error position.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change is effective pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6)<sup>15</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;

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<sup>13</sup> As defined in EDGA Rule 2.11(a).

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

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

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>16</sup> The Exchange has satisfied this requirement.

The Exchange submits that the instant filing is non-controversial in that it does not present any policy issue that has not been previously considered by the Commission. Specifically, DE Route's proposed use of its error account to resolve an error position resulting from one or more erroneous executions on the Exchange due to a Systems Issue experienced by the Exchange is substantially similar to provisions proposed by The NASDAQ Stock Market LLC ("NASDAQ") and NYSE Arca, Inc. ("Arca") that were approved by the Commission.<sup>17</sup>

#### IV. Solicitation of Comments

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

<sup>17</sup> See Securities Exchange Act Release No. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR-NASDAQ-2012-057) (order approving proposed rule change to amend NASDAQ Equity Rule 4758 to address the authority of NASDAQ or NASDAQ Execution Services to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for NASDAQ Execution Services). See also Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22) (order approving proposed rule change to amend Arca Equities Rule 7.45 to address the authority of Arca or Archipelago Securities LLC to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Archipelago Securities).



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-2012-43 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.

All submissions should refer to File Number SR-EDGA-2012-43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-EDGA-2012-43 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>18</sup>

Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5

Additions underlined

Deletions [bracketed]

## Rule 2.11 DE Route as Outbound Router

(a) (No change)

(a)(1)-(6) (No change)

(7) DE Route shall maintain an error account for the purpose of liquidating an error position [acquired in connection with its role as an Outbound Router] when such position, in the judgment of the Exchange or DE Route subject to the factors described herein, cannot be fairly and practicably assigned to one or more Members in its entirety. An error position can be acquired [as a] if it results from[of] a systems, technical or operational issue[s] experienced by DE Route, by the Exchange or by a Trading Center to which DE Route directed an outbound order.

(A) For purposes of Rule 2.11(a)(7), an error position shall not include any position that results from an order submitted by a Member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(B) Except as provided in Rule 2.11(a)(7)(C), DE Route shall not (i) accept any position in its error account from an account of a Member, or (ii) permit any Member to transfer any position from the Member's account to DE Route's error account.

(C) If a systems, technical or operational issue results in the Exchange not having valid clearing instructions for a Member's trade, DE Route may assume that Member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(D) The Exchange or DE Route shall consider the following factors in determining whether an error position can be fairly and practicably assigned to one or more Members:

- (i) [w]Whether the Exchange or DE Route has accurate and sufficient information to assign the entire amount of an error position to all affected Members; and
- (ii) [w]Whether the Exchange or DE Route is able to evaluate available information in order to assign the entire amount of

an error position to all affected Members by the first business day following the trade date on which the error position was established.

(E) When, as and if the Exchange or DE Route determines to acquire an error position into [the]DE Route's error account, DE Route shall liquidate such error position as soon as practicable. In liquidating such error position, DE Route shall:

- (i) [p]Provide complete time and price discretion to a third-party broker-dealer to liquidate such error position, and DE Route shall not attempt to exercise any influence or control over the timing or method of trading to liquidate such position; and
- (ii) [e]Establish and implement written policies and procedures in accordance with [this paragraph] Rule 2.11(a)(7) that are reasonably designed to restrict the flow of confidential and proprietary information associated with the liquidation of the error position between the Exchange and DE Route, on one hand, and the third-party broker-dealer, on the other.

(F) If the Exchange or DE Route determines, in its judgment subject to the factors described in subparagraph (a)(7)(D) hereof, that an error position can be fairly and practicably assigned to one or more Members in its entirety by the first business day following the trade date on which the error position was incurred, then the Exchange or DE Route will:

- (i) [a]Assign the entire amount of the error position to all affected Members[,]; and
- (ii) [m]Make and keep records to document the rationale for the assignment to such Members. DE Route shall also make and keep records of the factors considered in determining to acquire an error position into the error account. Such determinations and assignments shall be made in a non-discriminatory fashion. In addition, DE Route shall make and keep records associated with the liquidation of the error position through a third-party broker-dealer.

(b) (No change)

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