

*Required fields are shown with yellow backgrounds and asterisks.*

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

File No.\* SR - 2012 - \* 44

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 11.5(c) to add a new order type, the NBBO Offset Peg Order, to the rule.

**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 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**

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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 Change

(a) EDGA Exchange, Inc. (“EDGA” or the “Exchange”), proposes to amend Rule 11.5(c) to add a new order type, the NBBO Offset Peg Order, to the rule. 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 Securities and Exchange Commission (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 proposed rule change was approved by the Board of Directors of the Exchange on April 18, 2012. No other action is necessary for the filing of the proposed rule change. Therefore, the Exchange’s internal procedures with respect to the proposed rule 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 Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to add a new order type to Exchange Rule 11.5(c), the NBBO Offset Peg Order. While the NBBO Offset Peg Order would be available for all Users,<sup>1</sup> the Exchange believes it would be particularly useful for, and therefore used

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<sup>1</sup> As defined in Exchange Rule 1.5(ee).

predominately, if not exclusively, by Members<sup>2</sup> acting as Market Makers<sup>3</sup> in accordance with applicable Exchange Rules.<sup>4</sup>

The NBBO Offset Peg Order would enable Users to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the “NBB”) and National Best Offer (the “NBO”, and together with the NBB, the “NBBO”), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, would enable Market Makers to comply independently with the requirements of Regulation SHO<sup>5</sup> under the Securities Exchange Act of 1934 (the “Act”) and Rule 15c3-5<sup>6</sup> under the Act (the “Market Access Rule”), as described in more detail below.<sup>7</sup>

### Background

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

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<sup>2</sup> As defined in Exchange Rule 1.5(n).

<sup>3</sup> As defined in Exchange Rule 1.5(l).

<sup>4</sup> See Exchange Rules 11.18 (Registration of Market Makers), 11.19 (Obligations of Market Maker Authorized Traders), 11.20 (Registration of Market Makers in a Security) and 11.21 (Obligations of Market Makers).

<sup>5</sup> 17 C.F.R. 242.200 through 242.204.

<sup>6</sup> 17 CFR 242.15c3-5.

<sup>7</sup> The Exchange notes that the NBBO Offset Peg Order represents new functionality for the Exchange, which has not previously offered and does not currently offer any automated quote management (“AQ”) functionality, in contrast to other exchanges, such as The NASDAQ Stock Market LLC (“NASDAQ”) and BATS Exchange, Inc. (“BATS”), whose respective Market Maker Peg Orders replaced their previous AQ functionality.

designed to prevent the entry of orders for a broker-dealer, customer or other person if such person is restricted from trading those securities, and to assure that appropriate surveillance personnel receive immediate, post-trade execution reports that result from market access.<sup>8</sup>

In addition to the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking orders to sell as “long”, “short” or “short exempt”, obtaining a “locate” for short sale orders, closing out fail to deliver positions and, where applicable, complying with the short sale price test.<sup>9</sup> While Regulation SHO provides certain exceptions when a market maker is engaged in *bona fide* market making activity,<sup>10</sup> the availability of those exceptions would be distinct and independent from whether a Market Maker submitted an NBBO Offset Peg Order.

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<sup>8</sup> See supra note 6.

<sup>9</sup> 17 CFR 242.200 through 242.204.

<sup>10</sup> See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO’s “locate” requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in *bona fide* market making in the security at the time they effect the short sale are excepted from the “locate” requirement. See also Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute *bona fide* market making for purposes of claiming the exception to Regulation SHO’s “locate” requirement). See also Securities Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is *bona fide* market making for purposes of complying with the market maker exception to Regulation SHO’s “locate” requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, Market Makers would not be able to rely *solely* on quotations priced in accordance with the Designated Percentages under proposed Rule 11.5(c)(15) for eligibility for the *bona fide* market making exception to the “locate” requirement based on the criteria set forth by the Commission. It should also be noted that a determination of *bona fide* market making is relevant for purposes of a broker-dealer’s close-out obligations under Rule 204 of Regulation SHO. See also 17 CFR 242.204(a)(3).

### NBBO Offset Peg Order

In an effort to simplify Members' compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type, the NBBO Offset Peg Order, and add it to Rule 11.5(c) as new subparagraph (15). An NBBO Offset Peg Order would be a one-sided limit order<sup>11</sup> and, similar to other pegged orders available to Users, it would be tied or "pegged" to a certain price.<sup>12</sup> An NBBO Offset Peg Order would not be eligible for routing pursuant to Rule 11.9(b)(2) and would always be displayed on the Exchange. It is expected that Members would perform the necessary checks to comply with applicable regulatory requirements, including the Market Access Rule and Regulation SHO, as discussed above, prior to the entry of an NBBO Offset Peg Order.

As noted above, while use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.<sup>13</sup> Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session,<sup>14</sup> but the order is not executable or automatically priced until the beginning of Regular Trading Hours<sup>15</sup> and expires at the end of Regular Trading Hours.

Specifically, upon entry and at any time the price of the order reached the "Defined Limit",<sup>16</sup> or moved a specified number of percentage points away from the

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<sup>11</sup> The NBBO Offset Peg Order would be a one-sided order. Therefore, a Member acting as a Market Maker seeking to use the NBBO Offset Peg Order to comply with the Exchange's Market Maker quotation requirements would need to submit and maintain continuously both a bid and an offer using the order type.

<sup>12</sup> Rule 11.5(c)(6) defines "Pegged Order".

<sup>13</sup> Exchange Rule 11.21 describes the obligations of Members registered with the Exchange as Market Makers. Among other things, Market Makers are required to maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) of Rule 11.21, which generally states that such quotations must be priced within a designated percentage of the NBB for buy quotations, and the NBO for sell quotations.

<sup>14</sup> Rule 1.5(s) defines "Pre-Opening Session".

<sup>15</sup> Rule 1.5(y) defines "Regular Trading Hours".

<sup>16</sup> The "Defined Limit" is defined in Rule 11.21(d)(2)(F) to mean 9.5% for securities included in the S&P 500<sup>®</sup> Index and the Russell 1000<sup>®</sup> Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock

“Designated Percentage”<sup>17</sup> toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances. In the absence of an NBB or NBO and last reported sale, the order would be cancelled or rejected. Adjustment to the Designated Percentage would be designed to avoid an execution against an NBBO Offset Peg Order that would initiate an individual stock trading pause.

In the event that pricing an NBBO Offset Peg Order at the Designated Percentage away from the then current NBB or NBO, or, if no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order would be cancelled or rejected.

In the event of an execution against an NBBO Offset Peg Order that reduced the size of the order below one round lot, a Member acting as a Market Maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy its obligations under Rule 11.21. A new timestamp would be created each time an NBBO Offset Peg Order was automatically adjusted.

Users utilizing the NBBO Offset Peg Order would have control over order origination, as required by the Market Access Rule, while also enabling them to satisfy their order marking and locate obligations prior to order entry, as required by Regulation SHO. Thus, Members would be in a position to comply with the Market Access Rule and Regulation SHO just as they would when placing any other order on the Exchange, while

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pause trigger under the applicable rules of a listing market (the “Original Circuit Breaker Securities”). For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security’s listing market, the Defined Limit is 21.5% for Original Circuit Breaker Securities. For all NMS securities that are not Original Circuit Breaker Securities (“Non-Original Circuit Breaker Securities”) with a price equal to or greater than \$1, the Defined Limit is 29.5%, and 31.5% for those with a price less than \$1. See Rule 11.21(d)(2)(G).

<sup>17</sup> The “Designated Percentage” is defined in Rule 11.21(d)(2)(D) to mean 8% with respect to Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security’s listing market, the Designated Percentage is 20% for Original Circuit Breaker Securities. For Non-Original Circuit Breaker Securities with a price equal to or greater than \$1, the Designated Percentage is 28%, and 30% for those with a price less than \$1. See Rule 11.21(d)(2)(E).

also enabling Members acting as Market Makers using coupled buy and sell NBBO Offset Peg Orders to satisfy their Exchange Market Making obligations.<sup>18</sup>

The Exchange intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market participants in an information circular to be posted on the Exchange's website.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>19</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</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 proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>21</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum Market Maker quotation requirements and Member obligations generally to comply with the requirements of the Market Access Rule and Regulation SHO.

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 the proposed rule change.

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<sup>18</sup> In this regard, the NBBO Offset Peg Order would not ensure that the Member was satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78k-1(a)(1).



6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>22</sup> of the Act and Rule 19b-4(f)(6)<sup>23</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>24</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 issues that have not been previously considered by the Commission. Specifically, the NBBO Offset Peg Order is substantially similar in nature to the existing Market Maker Peg Order on NASDAQ<sup>25</sup> and the Market Maker Peg Order on BATS.<sup>26</sup> As discussed in greater detail below, two ways in which the NBBO Offset Peg Order would differ from the Market Maker Peg Orders of NASDAQ and BATS,

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> See Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR-NASDAQ-2012-066) (order approving NASDAQ's Market Maker Peg Order available for exchange market makers).

<sup>26</sup> See Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR-BATS-2012-026) (order approving BATS's Market Maker Peg Order available for exchange market makers). See also Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR-BYX-2012-012) (order approving BATS Y-Exchange Inc.'s Market Maker Peg Order available for exchange market makers).

respectively, are that, unlike the respective Market Maker Peg Orders, the NBBO Offset Peg Order (1) would be available for all Users, and not just Market Makers, and (2) would not allow a User to designate an offset more aggressive than the Designated Percentage.

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

As noted above, NASDAQ and BATS currently offer order types, in both cases called a Market Maker Peg Order, that are substantially similar to the NBBO Offset Peg Order. Specifically, like NASDAQ's and BATS's respective Market Maker Peg Orders, the NBBO Offset Peg Order would enable Users to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the NBB and NBO, respectively, while providing them full control over order origination and order marking. Further, while usage of the NBBO Offset Peg Order would not be limited to Market Makers, Members acting as Market Makers on the Exchange would be able to use paired NBBO Offset Peg Orders to buy and sell in order to comply with their quotation obligations under Exchange Rule 11.21, similar to market makers utilizing the Market Maker Peg Orders on NASDAQ and BATS.

NASDAQ's and BATS's respective Market Maker Peg Orders differ from the NBBO Offset Peg Order in that they are limited to market makers on their exchanges, while the NBBO Offset Peg Order, while likely to be used predominately, if not exclusively, by Market Makers, would nonetheless be available to any User. In addition, the NBBO Offset Peg Order would not allow a User to designate an offset more aggressive than the Designated Percentage, in contrast to NASDAQ's and BATS's counterparts. Moreover, while BATS would allow its market makers to direct that Market Maker Peg Orders submitted prior to the commencement of Regular Trading Hours to be executable or automatically priced prior to the commencement of Regular Trading Hours, the Exchange would not permit NBBO Offset Peg Orders submitted prior to the commencement of Regular Trading Hours to be executable or automatically priced until after the commencement of Regular Trading Hours.

Finally, upon reaching the Defined Limit, the price of an NBBO Offset Peg Order bid or offer would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, respectively, or if there were no NBB or NBO at such time, to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the User upon order entry to cancel or reject rather than adjust based on the last reported sale from the single plan processor. This provision, while similar to BATS's Market Maker Peg Order, differs from NASDAQ's insofar as NASDAQ does not enable a market maker to elect to cancel the order as opposed to the price of the order being adjusted as described above.

9. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGA-2012-44)

[Date]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to EDGA Rule 11.5 to Add a New Order Type.

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 ("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 Rule 11.5(c) to add a new order type, the NBBO Offset Peg Order, to the rule. 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

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

Purpose

The Exchange proposes to add a new order type to Exchange Rule 11.5(c), the NBBO Offset Peg Order. While the NBBO Offset Peg Order would be available for all Users,<sup>3</sup> the Exchange believes it would be particularly useful for, and therefore used predominately, if not exclusively, by Members<sup>4</sup> acting as Market Makers<sup>5</sup> in accordance with applicable Exchange Rules.<sup>6</sup>

The NBBO Offset Peg Order would enable Users to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the “NBB”) and National Best Offer (the “NBO”, and together with the NBB, the “NBBO”), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, would enable Market Makers to comply independently with the requirements of Regulation SHO<sup>7</sup> under the Securities Exchange

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<sup>3</sup> As defined in Exchange Rule 1.5(ee).

<sup>4</sup> As defined in Exchange Rule 1.5(n).

<sup>5</sup> As defined in Exchange Rule 1.5(l).

<sup>6</sup> See Exchange Rules 11.18 (Registration of Market Makers), 11.19 (Obligations of Market Maker Authorized Traders), 11.20 (Registration of Market Makers in a Security) and 11.21 (Obligations of Market Makers).

<sup>7</sup> 17 C.F.R. 242.200 through 242.204.

Act of 1934 (the “Act”) and Rule 15c3-5<sup>8</sup> under the Act (the “Market Access Rule”), as described in more detail below.<sup>9</sup>

### Background

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

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<sup>8</sup> 17 CFR 242.15c3-5.

<sup>9</sup> The Exchange notes that the NBBO Offset Peg Order represents new functionality for the Exchange, which has not previously offered and does not currently offer any automated quote management (“AQ”) functionality, in contrast to other exchanges, such as The NASDAQ Stock Market LLC (“NASDAQ”) and BATS Exchange, Inc. (“BATS”), whose respective Market Maker Peg Orders replaced their previous AQ functionality.

surveillance personnel receive immediate, post-trade execution reports that result from market access.<sup>10</sup>

In addition to the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking orders to sell as “long”, “short” or “short exempt”, obtaining a “locate” for short sale orders, closing out fail to deliver positions and, where applicable, complying with the short sale price test.<sup>11</sup> While Regulation SHO provides certain exceptions when a market maker is engaged in *bona fide* market making activity,<sup>12</sup> the

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<sup>10</sup> See supra note 8.

<sup>11</sup> 17 CFR 242.200 through 242.204.

<sup>12</sup> See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO’s “locate” requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in *bona fide* market making in the security at the time they effect the short sale are excepted from the “locate” requirement. See also Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute *bona fide* market making for purposes of claiming the exception to Regulation SHO’s “locate” requirement). See also Securities Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is *bona fide* market making for purposes of complying with the market maker exception to Regulation SHO’s “locate” requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, Market Makers would not be able to rely *solely* on quotations priced in accordance with the Designated Percentages under proposed Rule 11.5(c)(15) for eligibility for the *bona fide* market making exception to the “locate” requirement based on the criteria set forth by the Commission. It should also be noted that a determination of *bona fide* market making is relevant for purposes of a broker-dealer’s close-out obligations under Rule 204 of Regulation SHO. See also 17 CFR 242.204(a)(3).

availability of those exceptions would be distinct and independent from whether a Market Maker submitted an NBBO Offset Peg Order.

#### NBBO Offset Peg Order

In an effort to simplify Members' compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type, the NBBO Offset Peg Order, and add it to Rule 11.5(c) as new subparagraph (15). An NBBO Offset Peg Order would be a one-sided limit order<sup>13</sup> and, similar to other pegged orders available to Users, it would be tied or "pegged" to a certain price.<sup>14</sup> An NBBO Offset Peg Order would not be eligible for routing pursuant to Rule 11.9(b)(2) and would always be displayed on the Exchange. It is expected that Members would perform the necessary checks to comply with applicable regulatory requirements, including the Market Access Rule and Regulation SHO, as discussed above, prior to the entry of an NBBO Offset Peg Order.

As noted above, while use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.<sup>15</sup> Users may submit NBBO Offset Peg Orders to the Exchange

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<sup>13</sup> The NBBO Offset Peg Order would be a one-sided order. Therefore, a Member acting as a Market Maker seeking to use the NBBO Offset Peg Order to comply with the Exchange's Market Maker quotation requirements would need to submit and maintain continuously both a bid and an offer using the order type.

<sup>14</sup> Rule 11.5(c)(6) defines "Pegged Order".

<sup>15</sup> Exchange Rule 11.21 describes the obligations of Members registered with the Exchange as Market Makers. Among other things, Market Makers are required to



starting at the beginning of the Pre-Opening Session,<sup>16</sup> but the order is not executable or automatically priced until the beginning of Regular Trading Hours<sup>17</sup> and expires at the end of Regular Trading Hours.

Specifically, upon entry and at any time the price of the order reached the “Defined Limit”,<sup>18</sup> or moved a specified number of percentage points away from the “Designated Percentage”<sup>19</sup> toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted

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maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) of Rule 11.21, which generally states that such quotations must be priced within a designated percentage of the NBB for buy quotations, and the NBO for sell quotations.

<sup>16</sup> Rule 1.5(s) defines “Pre-Opening Session”.

<sup>17</sup> Rule 1.5(y) defines “Regular Trading Hours”.

<sup>18</sup> The “Defined Limit” is defined in Rule 11.21(d)(2)(F) to mean 9.5% for securities included in the S&P 500<sup>®</sup> Index and the Russell 1000<sup>®</sup> Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a listing market (the “Original Circuit Breaker Securities”). For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security’s listing market, the Defined Limit is 21.5% for Original Circuit Breaker Securities. For all NMS securities that are not Original Circuit Breaker Securities (“Non-Original Circuit Breaker Securities”) with a price equal to or greater than \$1, the Defined Limit is 29.5%, and 31.5% for those with a price less than \$1. See Rule 11.21(d)(2)(G).

<sup>19</sup> The “Designated Percentage” is defined in Rule 11.21(d)(2)(D) to mean 8% with respect to Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of a security’s listing market, the Designated Percentage is 20% for Original Circuit Breaker Securities. For Non-Original Circuit Breaker Securities with a price equal to or greater than \$1, the Designated Percentage is 28%, and 30% for those with a price less than \$1. See Rule 11.21(d)(2)(E).

by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances. In the absence of an NBB or NBO and last reported sale, the order would be cancelled or rejected. Adjustment to the Designated Percentage would be designed to avoid an execution against an NBBO Offset Peg Order that would initiate an individual stock trading pause.

In the event that pricing an NBBO Offset Peg Order at the Designated Percentage away from the then current NBB or NBO, or, if no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order would be cancelled or rejected.

In the event of an execution against an NBBO Offset Peg Order that reduced the size of the order below one round lot, a Member acting as a Market Maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy its obligations under Rule 11.21. A new timestamp would be created each time an NBBO Offset Peg Order was automatically adjusted.

Users utilizing the NBBO Offset Peg Order would have control over order origination, as required by the Market Access Rule, while also enabling them to satisfy their order marking and locate obligations prior to order entry, as required by Regulation SHO. Thus, Members would be in a position to comply with the Market Access Rule and Regulation SHO just as they would when placing any other order on the Exchange, while

also enabling Members acting as Market Makers using coupled buy and sell NBBO Offset Peg Orders to satisfy their Exchange Market Making obligations.<sup>20</sup>

The Exchange intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market participants in an information circular to be posted on the Exchange's website.

#### Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>21</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</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 proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>23</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum Market Maker quotation requirements and Member obligations

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<sup>20</sup> In this regard, the NBBO Offset Peg Order would not ensure that the Member was satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78k-1(a)(1).

generally to comply with the requirements of the Market Access Rule and Regulation SHO.

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

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

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 its Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>24</sup> of the Act and Rule 19b-4(f)(6)<sup>25</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.

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

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>26</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 issues that have not been previously considered by the Commission. Specifically, the NBBO Offset Peg Order is substantially similar in nature to the existing Market Maker Peg Order on NASDAQ<sup>27</sup> and the Market Maker Peg Order on BATS.<sup>28</sup> As discussed in greater detail below, two ways in which the NBBO Offset Peg Order would differ from the Market Maker Peg Orders of NASDAQ and BATS, respectively, are that, unlike the respective Market Maker Peg Orders, the NBBO Offset Peg Order (1) would be available for all Users, and not just Market Makers, and (2) would not allow a User to designate an offset more aggressive than the Designated Percentage.

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 Act.

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<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> See Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR-NASDAQ-2012-066) (order approving NASDAQ's Market Maker Peg Order available for exchange market makers).

<sup>28</sup> See Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR-BATS-2012-026) (order approving BATS's Market Maker Peg Order available for exchange market makers). See also Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR-BYX-2012-012) (order approving BATS Y-Exchange Inc.'s Market Maker Peg Order available for exchange market makers).

#### 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-2012-44 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-2012-44. 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-2012-44 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>29</sup>

Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5

Additions underlined

Deletions [bracketed]

EDGA Exchange, Inc.

## Rule 11.5. Orders and Modifiers

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

(a) – (b) (No change)

(c) (No change)

(c)(1) – (14) (No change)

(15)[ – (16)] [Reserved.] NBBO Offset Peg Order. An NBBO Offset Peg Order is a limit order that, upon entry, is automatically priced by the System at the Designated Percentage (as defined in Rule 11.21(d)(2)(D)) away from the then current NBB (in the case of an order to buy) or NBO (in the case of an order to sell), or if there is no NBB or NBO at such time, at the Designated Percentage away from the last reported sale from the responsible single plan processor. Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session, but the order is not executable or automatically priced until the beginning of Regular Trading Hours and expires at the end of Regular Trading Hours. Upon reaching the Defined Limit (as defined in Rule 11.21(d)(2)(F)), the price of an NBBO Offset Peg Order bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, respectively, or if there is no NBB or NBO at such time, to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the User upon order entry to cancel or reject rather than adjust based on the last reported sale from the single plan processor. If an NBBO Offset Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage toward the then current NBB or NBO, the price of such bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB and NBO. If there is no NBB or NBO at such time, the order will be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the User upon order entry to cancel or reject rather than adjust based on the last reported sale from the single plan processor. In the event that pricing an NBBO Offset Peg Order at the Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order



exceeding its limit price, the order will be cancelled or rejected. In the absence of an NBB or NBO and last reported sale, the order will be cancelled or rejected. NBBO Offset Peg Orders are not eligible for routing pursuant to Rule 11.9(b)(2) and are always displayed on the Exchange. Notwithstanding the availability of the NBBO Offset Peg Order functionality, a User acting as a Market Maker remains responsible for entering, monitoring, and re-submitting, as applicable, quotations that meet the requirements of Rule 11.21(d). A new timestamp is created for the order each time that it is automatically adjusted.

(16)            Reserved.

(17)            (No change)

(d) –(e)        (No change)