

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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

Exhibit 1 - Notice of Proposed Rule Change (required)

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) EDGX Exchange, Inc. (“EDGX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to offer a new Exchange market data product, Edge Routed Liquidity Report (“Edge Routed Liquidity Report” or the “Service”) to Members¹ and non-Members of the Exchange (collectively referred to as “Subscribers”). The Exchange proposes to add a description of the Edge Routed Liquidity Report to new Rule 13.9. The text of the proposed rule change is attached as Exhibit 5A. In connection with the Service, the Exchange is proposing to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c). The text of the proposed rule change is attached as Exhibit 5B. The Exchange intends to implement the proposed rule change on or about September 4, 2012.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange’s Board of Directors approved the proposed rule change on July 11, 2012. 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 rule change are complete.

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

Thomas N. McManus
Chief Regulatory Officer
EDGX 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

The purpose of the proposed rule change is to begin offering Edge Routed Liquidity Report, a data feed that contains historical order information for orders routed to away destinations by the Exchange. Edge Routed Liquidity Report will be a data feed product that provides routed order information to Subscribers on the morning of the following trading day (T + 1), including: limit price, routed quantity, symbol, side

¹ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

(bid/offer), time of routing, and the National Best Bid and Offer (NBBO) at the time of routing.

The Exchange will make Edge Routed Liquidity Report available to all Subscribers via subscription through secure Internet connections. Edge Routed Liquidity Report will be offered as either a standard report (the “Standard Report”) or a premium report (the “Premium Report”). Both the Standard Report and the Premium Report will provide Subscribers with a view of all marketable orders that are routed to away destinations by the Exchange. However, the Premium Report will also identify the routing destination as either directed to a destination that is not an exchange (“Non-Exchange Destination”) or directed to another exchange. For orders that are routed to a Non-Exchange Destination, the Premium Report will indicate the nature of any liquidity the originating routing strategy seeks.

Purchasers of Edge Routed Liquidity Report will be able to elect to obtain data on a rolling thirty (30) day subscription or a calendar month request for as many months as desired.

The Exchange is proposing to charge Subscribers a fee in the amount of \$500.00/month for a rolling thirty (30) day Standard Report and \$500.00/month for a calendar month request. With respect to the Premium Report, the Exchange is proposing to charge Subscribers a fee in the amount of \$1,500.00/month for a rolling thirty (30) day Premium Report and \$1,500.00/month for a calendar month request. Edge Routed Liquidity Report will be provided to Subscribers for internal use only, and thus, no redistribution will be permitted. Edge Routed Liquidity Report can be used by market participants to improve their trading and order routing strategies by being able to discern missed trading opportunities if a Member had been present on the EDGX book.

Edge Routed Liquidity Report will provide an indication of the quantity/quality of the order flow that Members of the Exchange could have interacted with if they had additional posted liquidity on the Exchange’s book. The purpose of Edge Routed Liquidity Report is to allow Subscribers to identify missed opportunities so that they can make the necessary trading system changes to better interact with missed liquidity. By making the Edge Routed Liquidity Report data available, the Exchange enhances market transparency and fosters competition among orders and markets.

Historical data can be used for a variety of purposes, such as to support financial market research and analysis as well as back-testing of new trading strategies to gauge effectiveness. The Exchange notes that various historical data products are offered by the Exchange and other market centers as discussed below.²

² See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the New York Stock Exchange (“NYSE”)); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities

The Exchange intends to implement the proposed rule change on or about September 4, 2012 and will announce its availability via an information circular to be posted on the Exchange's website.

(b) Statutory Basis

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934,³ (the "Act") and the rules and regulations thereunder that are applicable to a national securities exchange. The bases under the Act for the proposed rule change are: (1) the requirement under Section 6(b)(4)⁴ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities; and (2) the requirement under Section 6(b)(5)⁵ that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

Indeed, the Exchange believes that the proposed change is consistent with Section 6(b)(4) of the Act⁶ because it provides an equitable allocation of reasonable dues, fees and other charges among the Subscribers of the Exchange data. Edge Routed Liquidity Report is optional and fees charged for the Service will be the same for both Member and non-Member Subscribers.

Furthermore, as the Service will be provided in multiple packages, the Exchange intends to allow the purchase of such access in the manner that best meets the needs of, and is most cost efficient for, each respective Subscriber. The fees for Edge Routed Liquidity Report are uniform except with respect to reasonable distinctions with respect to Standard Report and the Premium Report. The Exchange proposes charging more for the Premium Report than for the Standard Report because of the additional features provided on the Premium Report, as described above. The fees reflect the differing offerings that a Subscriber may choose and are reasonable in light of the benefits of

Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(4).

market transparency and additional information to aid Subscribers in developing or modifying their trading strategies.

The revenue generated by Edge Routed Liquidity Report will pay for the development, marketing, technical infrastructure and operating costs of the Service, an important tool for market participants to use for purposes of analysis, research and testing. Profits generated above these costs will help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will allow the Exchange to offer an innovative Service at a reasonable rate, consistent with other self-regulatory organizations (“SROs”) who provide similar types of historical market data products.⁷ Furthermore, the fees are fair and reasonable because competition provides an effective constraint on the market data fees that the Exchange has the ability and incentive to charge for its market data products.⁸

The Exchange believes that the proposed rule change is also consistent with the objectives of Section 6(b)(5) of the Act,⁹ which requires, among other things, that the Exchange’s rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of an additional market data product and by announcing its availability via information circular. In addition, the Exchange is making a voluntary decision to make this Service available and through the dissemination of such market data, the Exchange will provide market participants with the opportunity to obtain

⁷ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

⁸ Id.

⁹ 15 U.S.C. 78f(b)(5).

additional data in furtherance of their investment decisions. Purchase of the Service is not a prerequisite for participation on the Exchange, nor is membership to the Exchange a prerequisite to purchase of the Service. Only those Subscribers that deem this market data product to be of sufficient overall value and usefulness will purchase it. Moreover, the fees will apply uniformly to all Subscribers of the Standard Report and Premium Report, respectively, irrespective of whether the Subscriber is a Member of the Exchange.

The Exchange is not required by the Act in the first instance to make the Service available. The Exchange chooses to make the Service available as proposed in order to improve market quality, to attract order flow, and to increase market transparency. Once this filing becomes effective, the Exchange will be required to continue making the Service available until such time as the Exchange changes its rule.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers (“BDs”) increased authority and flexibility to offer new and unique market data services to the public. The Commission believed this authority would expand the amount of data available to market participants, and also spur innovation and competition for the provision of market data. Edge Routed Liquidity Report appears to be precisely the sort of market data service that the Commission envisioned when it adopted Regulation NMS.¹⁰ The Service will offer routed order-specific data in a form not previously available to market data consumers, yet the Service will act in a manner functionally similar to market data products offered by the Exchange and other market centers.¹¹ The Service offers a new, alternative, innovative, useful and cost-effective market data

¹⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”).

¹¹ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

product that is consistent with existing historical type market data products. It will allow market participants to purchase useful historical data from the Exchange while at the same time enabling the Exchange to better cover its infrastructure costs and to improve its market technology and services. Finally, Edge Routed Liquidity Report will better enable market participants to conduct trading/investment analyses and discern useful market data concerning routed order flow to better meet their needs.

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'¹² The court agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'"¹³

The Court in *NetCoalition*, while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. The Exchange believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.¹⁴ Moreover, the Exchange further notes

¹² *NetCoalition*, at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

¹³ Id.

¹⁴ It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a proceeding with regard to a particular fee change

that the product at issue in this filing, a historical data product that is functionally similar to other historical data products whose fees have been reviewed and filed with the Commission,¹⁵ is quite different from the NYSEArca depth-of-book data product at issue in NetCoalition. Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

4. 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.

There is significant competition for the provision of market data to market participants, as well as competition for the orders that generate that data. In introducing the proposed Service, the Exchange would be providing an additional market data product to those already offered by other market centers.¹⁶

The Service is purely optional and can be used by Subscribers who see value in the format in which the Service presents historical data. Given this, the Exchange does not believe that the Service will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has 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.

is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

¹⁵ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

¹⁶ Id.

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) or Section 19(b)(7)(D)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁷ of the Act and Rule 19b-4(f)(6)¹⁸ 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 thirty (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 SRO 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 (5) 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 (5) business days prior to the date of filing. Further, the Exchange believes that this proposal is non-controversial in that it provides a data product that is offered to all Members and non-Members equally and the receipt and use of the Service is strictly voluntary. Edge Routed Liquidity Report provides Subscribers useful data concerning trade information. The Exchange notes that other national securities exchanges have recently filed rule proposals approved by the Commission or done so on an immediately effective basis which offer market data products to their Members.¹⁹ For

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.

The Exchange further respectfully requests that the Commission waive the thirty (30) day delayed operative date so that this proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)²⁰ of the Act and Rule 19b-4(f)(6)²¹ thereunder. Waiver of this requirement will allow the Exchange to immediately offer Subscribers the ability to obtain historical information about orders that are routed away from the Exchange to help improve their trading experience. The Exchange expects to have technological changes in place to support the proposed rule change on or about September 4, 2012, and believes that benefits to Subscribers expected from the proposed rule change should not be delayed. The Exchange further notes that the data is strictly voluntary. Based on the foregoing, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the thirty (30) day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.²² Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

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

This proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Text of proposed rule change.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EDGX-2012-37)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Edge Routed Liquidity Report

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 21, 2012, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the 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 offer a new Exchange market data product, Edge Routed Liquidity Report ("Edge Routed Liquidity Report" or the "Service") to Members³ and non-Members of the Exchange (collectively referred to as "Subscribers"). The Exchange proposes to add a description of the Edge Routed Liquidity Report to new Rule 13.9. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's website at www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

Purpose

The purpose of the proposed rule change is to begin offering Edge Routed Liquidity Report, a data feed that contains historical order information for orders routed to away destinations by the Exchange. Edge Routed Liquidity Report will be a data feed product that provides routed order information to Subscribers on the morning of the following trading day (T + 1), including: limit price, routed quantity, symbol, side (bid/offer), time of routing, and the National Best Bid and Offer (NBBO) at the time of routing.

The Exchange will make Edge Routed Liquidity Report available to all Subscribers via subscription through secure Internet connections. Edge Routed Liquidity Report will be offered as either a standard report (the "Standard Report") or a premium report (the "Premium Report"). Both the Standard Report and the Premium Report will provide Subscribers with a view of all marketable orders that are routed to away destinations by the Exchange. However, the Premium Report will also identify the routing destination as either directed to a destination that is not an exchange ("Non-

Exchange Destination”) or directed to another exchange. For orders that are routed to a Non-Exchange Destination, the Premium Report will indicate the nature of any liquidity the originating routing strategy seeks.

Purchasers of Edge Routed Liquidity Report will be able to elect to obtain data on a rolling thirty (30) day subscription or a calendar month request for as many months as desired.

The Exchange is proposing to charge Subscribers a fee in the amount of \$500.00/month for a rolling thirty (30) day Standard Report and \$500.00/month for a calendar month request. With respect to the Premium Report, the Exchange is proposing to charge Subscribers a fee in the amount of \$1,500.00/month for a rolling thirty (30) day Premium Report and \$1,500.00/month for a calendar month request. Edge Routed Liquidity Report will be provided to Subscribers for internal use only, and thus, no redistribution will be permitted. Edge Routed Liquidity Report can be used by market participants to improve their trading and order routing strategies by being able to discern missed trading opportunities if a Member had been present on the EDGX book.

Edge Routed Liquidity Report will provide an indication of the quantity/quality of the order flow that Members of the Exchange could have interacted with if they had additional posted liquidity on the Exchange’s book. The purpose of Edge Routed Liquidity Report is to allow Subscribers to identify missed opportunities so that they can make the necessary trading system changes to better interact with missed liquidity. By making the Edge Routed Liquidity Report data available, the Exchange enhances market transparency and fosters competition among orders and markets.

Historical data can be used for a variety of purposes, such as to support financial market research and analysis as well as back-testing of new trading strategies to gauge effectiveness. The Exchange notes that various historical data products are offered by the Exchange and other market centers as discussed below.⁴

The Exchange intends to implement the proposed rule change on or about September 4, 2012 and will announce its availability via an information circular to be posted on the Exchange's website.

Basis

The proposed rule change is consistent with the requirements of the Act⁵ and the rules and regulations thereunder that are applicable to a national securities exchange. The bases under the Act for the proposed rule change are: (1) the requirement under Section 6(b)(4)⁶ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its

⁴ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the New York Stock Exchange ("NYSE")); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

facilities; and (2) the requirement under Section 6(b)(5)⁷ that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

Indeed, the Exchange believes that the proposed change is consistent with Section 6(b)(4) of the Act⁸ because it provides an equitable allocation of reasonable dues, fees and other charges among the Subscribers of the Exchange data. Edge Routed Liquidity Report is optional and fees charged for the Service will be the same for both Member and non-Member Subscribers.

Furthermore, as the Service will be provided in multiple packages, the Exchange intends to allow the purchase of such access in the manner that best meets the needs of, and is most cost efficient for, each respective Subscriber. The fees for Edge Routed Liquidity Report are uniform except with respect to reasonable distinctions with respect to Standard Report and the Premium Report. The Exchange proposes charging more for the Premium Report than for the Standard Report because of the additional features provided on the Premium Report, as described above. The fees reflect the differing offerings that a Subscriber may choose and are reasonable in light of the benefits of market transparency and additional information to aid Subscribers in developing or modifying their trading strategies.

The revenue generated by Edge Routed Liquidity Report will pay for the development, marketing, technical infrastructure and operating costs of the Service, an important tool for market participants to use for purposes of analysis, research and testing. Profits generated above these costs will help offset the costs that the Exchange

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(4).

incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will allow the Exchange to offer an innovative Service at a reasonable rate, consistent with other self-regulatory organizations (“SROs”) who provide similar types of historical market data products.⁹ Furthermore, the fees are fair and reasonable because competition provides an effective constraint on the market data fees that the Exchange has the ability and incentive to charge for its market data products.¹⁰

The Exchange believes that the proposed rule change is also consistent with the objectives of Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the Exchange’s rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove

⁹ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

¹⁰ Id.

¹¹ 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of an additional market data product and by announcing its availability via information circular. In addition, the Exchange is making a voluntary decision to make this Service available and through the dissemination of such market data, the Exchange will provide market participants with the opportunity to obtain additional data in furtherance of their investment decisions. Purchase of the Service is not a prerequisite for participation on the Exchange, nor is membership to the Exchange a prerequisite to purchase of the Service. Only those Subscribers that deem this market data product to be of sufficient overall value and usefulness will purchase it. Moreover, the fees will apply uniformly to all Subscribers of the Standard Report and Premium Report, respectively, irrespective of whether the Subscriber is a Member of the Exchange.

The Exchange is not required by the Act in the first instance to make the Service available. The Exchange chooses to make the Service available as proposed in order to improve market quality, to attract order flow, and to increase market transparency. Once this filing becomes effective, the Exchange will be required to continue making the Service available until such time as the Exchange changes its rule.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers (“BDs”) increased authority and flexibility to offer new and unique market data services to the public. The Commission believed this authority would expand the amount of data available to market participants, and also spur innovation and competition for the provision of market data. Edge Routed Liquidity Report appears to be precisely the sort

of market data service that the Commission envisioned when it adopted Regulation NMS.¹² The Service will offer routed order-specific data in a form not previously available to market data consumers, yet the Service will act in a manner functionally similar to market data products offered by the Exchange and other market centers.¹³ The Service offers a new, alternative, innovative, useful and cost-effective market data product that is consistent with existing historical type market data products. It will allow market participants to purchase useful historical data from the Exchange while at the same time enabling the Exchange to better cover its infrastructure costs and to improve its market technology and services. Finally, Edge Routed Liquidity Report will better enable market participants to conduct trading/investment analyses and discern useful market data concerning routed order flow to better meet their needs.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”).

¹³ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'¹⁴ The court agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'"¹⁵

The Court in *NetCoalition*, while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. The Exchange believes that there is substantial evidence of

¹⁴ *NetCoalition*, at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

¹⁵ Id.

competition in the marketplace for data that was not in the record in the NetCoalition case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.¹⁶ Moreover, the Exchange further notes that the product at issue in this filing, a historical data product that is functionally similar to other historical data products whose fees have been reviewed and filed with the Commission,¹⁷ is quite different from the NYSEArca depth-of-book data product at issue in NetCoalition. Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

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

¹⁶ It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") has amended paragraph (A) of Section 19(b)(3) of the Act, *15 U.S.C. 78s(b)(3)*, to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

¹⁷ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

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.

There is significant competition for the provision of market data to market participants, as well as competition for the orders that generate that data. In introducing the proposed Service, the Exchange would be providing an additional market data product to those already offered by other market centers.¹⁸

The Service is purely optional and can be used by Subscribers who see value in the format in which the Service presents historical data. Given this, the Exchange does not believe that the Service will result in 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 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)¹⁹ of the Act and Rule 19b-4(f)(6)²⁰ 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

¹⁸ Id.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

become operative for thirty (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 SRO 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 (5) 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 (5) business days prior to the date of filing. Further, the Exchange believes that this proposal is non-controversial in that it provides a data product that is offered to all Members and non-Members equally and the receipt and use of the Service is strictly voluntary. Edge Routed Liquidity Report provides Subscribers useful data concerning trade information. The Exchange notes that other national securities exchanges have recently filed rule proposals approved by the Commission or done so on an immediately effective basis which offer market data products to their Members.²¹ For

²¹ See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR-BATS-2010-002) (adopting BATS market data products, including BATS Historical Data Products); see also, NYSE Technologies, Market Data, www.nyxdata.com (providing information regarding historical data products offered by the NYSE); see also, NASDAQ Rules 7022 and 7023 (establishing fees for Historical Research and Administrative Reports and NASDAQ Depth-of-Book Data); see also, Securities Exchange Act Release No. 61416 (January 25, 2010), 75 FR 5821 (February 4, 2010) (SR-NASDAQ-2010-010) (relating to NASDAQ rule governing Historical ModelView product); see also, Securities Exchange Act Release No. 66403 (February 15, 2012), 77 FR 10593 (February 22, 2012) (SR-EDGA-2012-05) (adopting EdgeBook Cloud service); see also, Securities Exchange Act Release No. 66402 (February 15, 2012), 77 FR 10595 (February 22, 2012) (SR-EDGX-2012-05) (adopting EdgeBook Cloud service).

the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.

The Exchange further respectfully requests that the Commission waive the thirty (30) day delayed operative date so that this proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)²² of the Act and Rule 19b-4(f)(6)²³ thereunder. Waiver of this requirement will allow the Exchange to immediately offer Subscribers the ability to obtain historical information about orders that are routed away from the Exchange to help improve their trading experience. The Exchange expects to have technological changes in place to support the proposed rule change on or about September 4, 2012, and believes that benefits to Subscribers expected from the proposed rule change should not be delayed. The Exchange further notes that the data is strictly voluntary. Based on the foregoing, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the thirty (30) day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.²⁴ Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-EDGX-2012-37 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-EDGX-2012-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2012-37 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.²⁵

Secretary

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5A

Additions underlined

Deletions [bracketed]

EDGX Rule Book

CHAPTER XIII. MISCELLANEOUS PROVISIONS

Rules 13.1 - 13.8 (No change)

Rule 13.9 Edge Routed Liquidity Report

The Edge Routed Liquidity Report is a data feed that contains historical order information for listed securities routed to away destinations by EDGX, including: limit price, routed quantity, symbol, side (bid/offer), time of routing, and the National Best Bid and Offer (NBBO) at the time of routing.

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EXHIBIT 5B**Additions underlined****Deletions [bracketed]****EDGX Exchange Fee Schedule**

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Edge Routed Liquidity Report Pricing

The following fees will begin to be assessed after the operative date of filing SR-EDGX-2012-37:

<u>Service</u>	<u>Data Received</u>	<u>Price</u>
<u>Standard Report</u>	<u>Rolling 30 days</u>	<u>\$500/month</u>
<u>Standard Report</u>	<u>Calendar Month Request</u>	<u>\$500/month requested</u>
<u>Premium Report</u>	<u>Rolling 30 days</u>	<u>\$1,500/month</u>
<u>Premium Report</u>	<u>Calendar Month Request</u>	<u>\$1,500/month requested</u>

* * * * *