

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="35"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="20"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **EDGX Exchange, Inc.**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

EDGX Exchange, Inc. proposes to amend Footnote 4 of its fee schedule regarding Retail Orders.

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 action.

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

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

(Title *)

Date <input type="text" value="06/13/2013"/>	General Counsel
By <input type="text" value="Jeffrey S. Rosenstock"/> (Name *)	<input type="text"/>

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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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, security-based swap submission, or advance notice 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”) proposes to amend Footnote 4 of the Exchange’s fee schedule regarding Retail Orders. 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 Securities and Exchange Commission (the “Commission”).
- (b) The Exchange does not believe that the proposed rule change would 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 senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on April 27, 2010. Exchange staff will advise the EDGX Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the 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
EDGX 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

In SR-EDGX-2012-47,¹ the Exchange introduced new flags ZA (Retail Order, adds liquidity) and ZR (Retail Order, removes liquidity) and appended to each flag Footnote 4 to the Exchange’s fee schedule. Footnote 4 defined a “Retail Order,” provided an attestation requirement for Members² to comply with when sending Retail Orders to the Exchange, and allowed Members to designate orders as Retail Orders on an

¹ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

² As defined in Exchange Rule 1.5(n).

order-by-order basis. In SR-EDGX-2012-48,³ the Exchange subsequently expanded Members' ability to send the Exchange Retail Orders by designating certain of their FIX ports at the Exchange as "Retail Order Ports." The attestation requirement, as described in SR-EDGX-2012-47,⁴ continues to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports. In SR-EDGX-2013-13, the Exchange added riskless principal orders to the types of orders that may qualify as Retail Orders.⁵

Proposed Amendment to Retail Attestation

In SR-EDGX-2012-47,⁶ the Exchange stated requirements for Members that represent Retail Orders from another broker-dealer customer. The requirements state that "[t]he Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements."⁷

³ See Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR-EDGX-2012-48).

⁴ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

⁵ See Securities Exchange Act Release No. 69378 (April 15, 2013), 77 FR 23617 (April 19, 2013) (SR-EDGX-2013-13). Footnote 4 on the Exchange's fee schedule currently defines a Retail Order as: "(i) an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology." See EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

⁶ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

⁷ The Exchange notes that it has amended its attestation form for Members designating Retail Orders to add this requirement. The Exchange also notes that the Exchange's regulatory service provider, on behalf of the Exchange, will review Members' compliance with the attestation requirement through an exam based review of a Member's internal controls.

The Exchange proposes to codify in Footnote 4 of its fee schedule similar language, but delete the requirement that the form be acceptable to the Exchange. With the deletion of this requirement, the proposed language to be added to Footnote 4 of the Exchange's fee schedule still requires Members to obtain an annual written representation if they represent Retail Orders from another broker-dealer customer and Footnote 4 provides criteria that all Members who submit Retail Orders must satisfy.⁸ In addition, Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with their supervisory procedure requirement, as outlined in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA was to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the Exchange.⁹ Furthermore, the Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

The Exchange notes that the above language regarding Members' requirements with respect to Retail Orders sent to them from another broker-dealer was previously filed with the Commission, albeit containing the requirement that the form be acceptable to the Exchange.¹⁰ The present filing is merely codifying such language in the Exchange's fee schedule, with the exception of the requirement that the form be acceptable to the Exchange. In addition, the Exchange notes that other market centers have codified or are in the process of codifying similar language.¹¹

⁸ The Exchange notes that currently Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

⁹ As described in Chapter VIII of the Exchange's Rules.

¹⁰ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

¹¹ The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX

Proposed Amendment to Definition of Retail Order

In addition, Footnote 4 to the Exchange's fee schedule currently states that "Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a 'Retail Order' complies with the [Retail Order] requirements."¹² The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from utilizing Retail Orders. In particular, the Exchange understands that some Members wishing to utilize Retail Orders represent both "Retail Orders", as defined in Footnote 4 to the Exchange's fee schedule, as well as other agency flow that may not meet the strict definition of a "Retail Order." The Exchange further understands that limitations in order management systems and routing networks used by such Members may make it infeasible for them to isolate 100% of their Retail Orders from other agency, non-Retail Order flow that they would otherwise send to the Exchange as Retail Orders. Unable to make the categorical attestation required by the current language in Footnote 4 to the Exchange's fee schedule, some Members have chosen not to utilize Retail Orders, notwithstanding that substantially all order flow from such Members would qualify as Retail Orders. This limitation has the effect of preventing such Members' retail customers from benefiting from the rebate offered to Retail Orders through Flags ZA (\$0.0032 per share rebate) and the ability to qualify for a Retail Order Tier of \$0.0034 per share, provided certain conditions are met.¹³

Accordingly, in order to accommodate these system limitations and expand the access of Retail Orders to more Members, the Exchange is proposing a de minimis relaxation of the attestation requirement in Footnote 4 of its fee schedule. Therefore, as proposed, Members would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under the existing attestation requirement. Therefore, the Exchange proposes to amend Footnote 4 to provide that a Member may attest that "substantially all" of the orders it designates as Retail Orders qualify as Retail Orders, replacing the requirement that the Member must attest that "every order" qualifies as a Retail Order. The Exchange proposes to amend Footnote 4 to its fee schedule to state that "Members must submit a signed written

Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_for_m_nov_2012.pdf.

¹² See EDGX, EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

¹³ Members will be provided a rebate of \$0.0034 per share if they add an average daily volume of Retail Orders (Flag ZA) that is 0.10% or more of the TCV on a daily basis, measured monthly.

attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that **substantially all orders** designated by the Member as a ‘Retail Order’ comply with the above requirements.” (emphasis added).

The Exchange will issue a Regulatory Notice to make clear that the “substantially all” language is meant to permit the presence of only isolated and de minimus quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, a Member would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.¹⁴

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because it would communicate to market participants that significant safeguards are in place to protect the integrity of the retail order flow and codify that it is the Member’s duty to ensure its supervisory procedures are reasonably designed to assure designated Retail Orders it receives from a broker-dealer customer meet the definition of a Retail Order. As part of this duty, a Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. The Exchange notes that this duty was communicated in a previous filing submitted to the Commission by the Exchange, and that the purpose of this filing is to increase transparency by codifying such duty in the Exchange’s fee schedule, with the

¹⁴ FINRA, on behalf of the Exchange, will review a Member’s compliance with these requirements.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

exception of the requirement that the form be acceptable to the Exchange.¹⁷ The Exchange's elimination of the requirement that the form be acceptable to the Exchange provides Members additional flexibility to structure their written supervisory procedures in a way that best suits each individual Member.¹⁸ The proposed language to be added to Footnote 4 of the Exchange's fee schedule defines the criteria for Members to meet to comply with the "Retail Order" definition if they represent Retail Orders from another broker-dealer customer. In addition, Footnote 4 provides criteria for all Members to meet to satisfy the "Retail Order" definition.¹⁹ Subsequent to the proposed rule change, the Exchange notes that the text of Footnote 4 regarding the attestation requirement would read as follows:

If the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with the supervisory procedure requirement also in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, FINRA, on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA were to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the

¹⁷ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

¹⁸ The Exchange notes that Members will continue to be required to submit to the Exchange an attestation in a form acceptable to the Exchange regarding their own retail order flow.

¹⁹ The Exchange notes that Members must continue to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

disciplinary procedures of the Exchange.²⁰ The Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

Such procedures are designed to promote just and equitable principles of trade and removes impediments to and perfect the mechanism of a free and open market and a national market system because they provide a backstop that would ensure the integrity of the retail order flow sent to the Exchange.

The Exchange believes that the proposed change would protect investors and the public interest by making more transparent the requirements for Members surrounding broker-dealer customers of Members that plan to utilize Retail Orders and codify the supervisory duty of the Member to ensure such customers abide by the requirements of Retail Orders, thus promoting the integrity of the retail order flow sent to the Exchange and acting as a deterrent to prevent potential abuse of the Retail Order designation. Accordingly, the proposed amendment to the requirements for Retail Orders would contribute to investors' confidence in the fairness of their transactions, prompting investors to send more retail order flow to the Exchange, which would subsequently benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery and promoting market transparency.

The Exchange believes that its proposal to amend Footnote 4 of its fee schedule to provide that a Member may attest that "substantially all" of the orders it submits to the Exchange qualify as Retail Orders is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the Member to attest that "substantially all" of its orders will qualify as Retail Orders. This de minimis relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted as Retail Orders would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow Members, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still utilize Retail Orders. By removing impediments to the characterizing of orders as Retail Orders, the proposed change would permit expanded access of Members and their retail customers to

²⁰ As described in Chapter VIII of the Exchange's Rules.

the potential rebate and tiered pricing offered to Retail Orders (Flag ZA and the Retail Tier in Footnote 4 of the Exchange's fee schedule).

In addition, the Exchange notes that the proposed amendment will render the Exchange's definition closer to the definitions utilized by the Exchange's competitors.²¹

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

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

The Exchange believes that the proposed amendment to Footnote 4 of the Exchange's fee schedule would not burden intramarket competition because the ability to submit Retail Orders would continue to be open to all Members that wish to send Retail Orders to the Exchange, including those that represent Retail Orders from another broker-dealer customer, requiring an attestation, as described above.

The Exchange believes that the proposed amendment would not burden intermarket competition because the proposed amendment is similar to that utilized by other market centers.²² This amendment would increase transparency and promote the integrity of the retail order flow sent to the Exchange, which would stimulate Members to send more retail order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow.

The Exchange does not believe that the proposed amendment to the definition of Retail Order will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment, by increasing the level of participation of Retail Orders, would increase the level of competition around retail executions such that retail investors would receive

²¹ See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

²² The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_for_m_nov_2012.pdf.

better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of allowing Retail Orders on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of exchanges to encompass practices currently allowed on non-exchange venues.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²³ of the Act and Rule 19b-4(f)(6)²⁴ 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 (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.

The Exchange believes that this proposal is non-controversial in that it is similar to rule changes undertaken by other exchanges.²⁵ The Exchange believes that Members

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ The Exchange notes that its proposed attestation language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. *See, e.g.*, NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks.

should reap the benefits of the proposed amendments immediately, as it believes transparency would be enhanced and use of Retail Orders increased as a result of the promotion of the integrity of the retail order flow sent to the Exchange.

The Exchange believes the proposed rule change would not significantly affect the protection of investors or the public interest because the rule proposal is intended to codify a Member's supervisory duty with regard to a customer broker-dealer's usage of Retail Orders. This proposed amendment would, as previously stated, increase transparency and promote the integrity of the retail order flow sent to the Exchange, which would stimulate Members to send more retail order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow. In addition, as outlined above, safeguards are in place that provide a backstop that would ensure the integrity of the retail order flow sent to the Exchange.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.²⁶

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)²⁷ of the Act and Rule 19b-4(f)(6) thereunder.²⁸ Waiver of the thirty (30) day delayed operative date would codify the requirements regarding submission of Retail Orders by broker-dealer customers of a Member and aid such Members in complying with the requirements immediately without further delay. Furthermore, waiver of the thirty (30) day pre-operative waiting period would not be harmful to investors because adequate safeguards are in place to prevent abuse of the retail order designation by Members. As discussed above, the proposed language to be added to Footnote 4 of the Exchange's fee schedule defines the criteria for Members to meet to comply with the "Retail Order" definition if they represent Retail Orders from another broker-dealer customer. In addition, Footnote

NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_for_m_nov_2012.pdf. With regard to the requirement that "substantially all" orders designated as Retail Orders meet the definition of Retail Orders, the Exchange notes that the Commission has recently approved identical language utilized by NYSE, NYSE MKT LLC, NASDAQ Stock Market LLC ("NASDAQ") and BATS Y-Exchange, Inc. ("BYX"). See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6).

4 provides criteria for all Members to meet to satisfy the “Retail Order” definition.²⁹ Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 so that Members themselves can comply with the requirement. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members’ varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, FINRA, on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members’ supervisory procedures to determine whether such procedures adequately comply with the Exchange’s retail order designation requirements. If FINRA determines that a Member’s supervisory procedures are inadequate, such Member would be subject to the disciplinary procedures of the Exchange.³⁰ The Exchange bears ultimate responsibility for FINRA’s actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

Furthermore, the Exchange submits that the addition of the language stating that “substantially all” orders designated as Retail Orders meet the definition of Retail Orders is non-controversial in that it does not present any policy issues that have not been previously considered by the Commission, but rather, is a minor change to the Exchange’s existing rules that is consistent with the rules of other national securities exchanges. Specifically, the Exchange notes that the Commission has recently approved identical language utilized by NYSE, NYSE MKT LLC, NASDAQ and BYX.³¹ Waiver of the thirty (30) day delayed operative date would allow the Exchange to continue to compete with these exchanges as well as permit expanded access of Members and their retail customers to the potential rebate and tiered pricing (Flag ZA and the Retail Tier in Footnote 4 of the Exchange’s fee schedule, respectively) benefitting Retail Orders without delay.

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-

²⁹ The Exchange notes that Members must continue to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a “Retail Order” complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange’s fee schedule.

³⁰ As described in Chapter VIII of the Exchange’s Rules.

³¹ See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.³² 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

The Exchange notes that the language to be added to Footnote 4 of the Exchange's fee schedule is similar to that utilized by NYSE, NYSE MKT LLC, NYSE Arca, NASDAQ and BYX.³³

9. Security Based-Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change.

³² 17 CFR 240.19b-4(f)(6)(iii).

³³ The Exchange notes that its proposed attestation language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_for_m_nov_2012.pdf. With regard to the requirement that “substantially all” orders designated as Retail Orders meet the definition of Retail Orders, the Exchange notes that the Commission has recently approved identical language utilized by NYSE, NYSE MKT LLC, NASDAQ and BYX. See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EDGX-2013-20)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule regarding Retail Orders

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 June 13, 2013, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Footnote 4 of the Exchange's fee schedule regarding Retail Orders. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet website at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-EDGX-2012-47,³ the Exchange introduced new flags ZA (Retail Order, adds liquidity) and ZR (Retail Order, removes liquidity) and appended to each flag Footnote 4 to the Exchange's fee schedule. Footnote 4 defined a "Retail Order," provided an attestation requirement for Members⁴ to comply with when sending Retail Orders to the Exchange, and allowed Members to designate orders as Retail Orders on an order-by-order basis. In SR-EDGX-2012-48,⁵ the Exchange subsequently expanded Members' ability to send the Exchange Retail Orders by designating certain of their FIX ports at the Exchange as "Retail Order Ports." The attestation requirement, as described in SR-EDGX-2012-47,⁶ continues to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports. In SR-EDGX-2013-13, the

³ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

⁴ As defined in Exchange Rule 1.5(n).

⁵ See Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR-EDGX-2012-48).

⁶ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

Exchange added riskless principal orders to the types of orders that may qualify as Retail Orders.⁷

Proposed Amendment to Retail Attestation

In SR-EDGX-2012-47,⁸ the Exchange stated requirements for Members that represent Retail Orders from another broker-dealer customer. The requirements state that “[t]he Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.”⁹

⁷ See Securities Exchange Act Release No. 69378 (April 15, 2013), 77 FR 23617 (April 19, 2013) (SR-EDGX-2013-13). Footnote 4 on the Exchange's fee schedule currently defines a Retail Order as: “(i) an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.” See EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

⁸ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

⁹ The Exchange notes that it has amended its attestation form for Members designating Retail Orders to add this requirement. The Exchange also notes that the Exchange's regulatory service provider, on behalf of the Exchange, will review Members' compliance with the attestation requirement through an exam based review of a Member's internal controls.

The Exchange proposes to codify in Footnote 4 of its fee schedule similar language, but delete the requirement that the form be acceptable to the Exchange. With the deletion of this requirement, the proposed language to be added to Footnote 4 of the Exchange's fee schedule still requires Members to obtain an annual written representation if they represent Retail Orders from another broker-dealer customer and Footnote 4 provides criteria that all Members who submit Retail Orders must satisfy.¹⁰ In addition, Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with their supervisory procedure requirement, as outlined in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA was to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the

¹⁰ The Exchange notes that currently Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

Exchange.¹¹ Furthermore, the Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

The Exchange notes that the above language regarding Members' requirements with respect to Retail Orders sent to them from another broker-dealer was previously filed with the Commission, albeit containing the requirement that the form be acceptable to the Exchange.¹² The present filing is merely codifying such language in the Exchange's fee schedule, with the exception of the requirement that the form be acceptable to the Exchange. In addition, the Exchange notes that other market centers have codified or are in the process of codifying similar language.¹³

Proposed Amendment to Definition of Retail Order

In addition, Footnote 4 to the Exchange's fee schedule currently states that "Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably

¹¹ As described in Chapter VIII of the Exchange's Rules.

¹² See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

¹³ The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_for_m_nov_2012.pdf.

designed to ensure that every order designated by the Member as a ‘Retail Order’ complies with the [Retail Order] requirements.”¹⁴ The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from utilizing Retail Orders. In particular, the Exchange understands that some Members wishing to utilize Retail Orders represent both “Retail Orders”, as defined in Footnote 4 to the Exchange’s fee schedule, as well as other agency flow that may not meet the strict definition of a “Retail Order.” The Exchange further understands that limitations in order management systems and routing networks used by such Members may make it infeasible for them to isolate 100% of their Retail Orders from other agency, non-Retail Order flow that they would otherwise send to the Exchange as Retail Orders. Unable to make the categorical attestation required by the current language in Footnote 4 to the Exchange’s fee schedule, some Members have chosen not to utilize Retail Orders, notwithstanding that substantially all order flow from such Members would qualify as Retail Orders. This limitation has the effect of preventing such Members’ retail customers from benefiting from the rebate offered to Retail Orders through Flags ZA (\$0.0032 per share rebate) and the ability to qualify for a Retail Order Tier of \$0.0034 per share, provided certain conditions are met.¹⁵

Accordingly, in order to accommodate these system limitations and expand the access of Retail Orders to more Members, the Exchange is proposing a de minimis relaxation of the attestation requirement in Footnote 4 of its fee schedule. Therefore, as

¹⁴ See EDGX, EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

¹⁵ Members will be provided a rebate of \$0.0034 per share if they add an average daily volume of Retail Orders (Flag ZA) that is 0.10% or more of the TCV on a daily basis, measured monthly.

proposed, Members would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under the existing attestation requirement. Therefore, the Exchange proposes to amend Footnote 4 to provide that a Member may attest that “substantially all” of the orders it designates as Retail Orders qualify as Retail Orders, replacing the requirement that the Member must attest that “every order” qualifies as a Retail Order. The Exchange proposes to amend Footnote 4 to its fee schedule to state that “Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that **substantially all orders** designated by the Member as a ‘Retail Order’ comply with the above requirements.” (emphasis added).

The Exchange will issue a Regulatory Notice to make clear that the “substantially all” language is meant to permit the presence of only isolated and de minimus quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, a Member would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.¹⁶

¹⁶ FINRA, on behalf of the Exchange, will review a Member’s compliance with these requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because it would communicate to market participants that significant safeguards are in place to protect the integrity of the retail order flow and codify that it is the Member's duty to ensure its supervisory procedures are reasonably designed to assure designated Retail Orders it receives from a broker-dealer customer meet the definition of a Retail Order. As part of this duty, a Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. The Exchange notes that this duty was communicated in a previous filing submitted to the Commission by the Exchange, and that the purpose of this filing is to increase transparency by codifying such duty in the Exchange's fee schedule, with the

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

exception of the requirement that the form be acceptable to the Exchange.¹⁹ The Exchange's elimination of the requirement that the form be acceptable to the Exchange provides Members additional flexibility to structure their written supervisory procedures in a way that best suits each individual Member.²⁰ The proposed language to be added to Footnote 4 of the Exchange's fee schedule defines the criteria for Members to meet to comply with the "Retail Order" definition if they represent Retail Orders from another broker-dealer customer. In addition, Footnote 4 provides criteria for all Members to meet to satisfy the "Retail Order" definition.²¹ Subsequent to the proposed rule change, the Exchange notes that the text of Footnote 4 regarding the attestation requirement would read as follows:

If the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance

¹⁹ See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

²⁰ The Exchange notes that Members will continue to be required to submit to the Exchange an attestation in a form acceptable to the Exchange regarding their own retail order flow.

²¹ The Exchange notes that Members must continue to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with the supervisory procedure requirement also in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, FINRA, on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA were to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the Exchange.²² The Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

Such procedures are designed to promote just and equitable principles of trade and removes impediments to and perfect the mechanism of a free and open market and a

²² As described in Chapter VIII of the Exchange's Rules.

national market system because they provide a backstop that would ensure the integrity of the retail order flow sent to the Exchange.

The Exchange believes that the proposed change would protect investors and the public interest by making more transparent the requirements for Members surrounding broker-dealer customers of Members that plan to utilize Retail Orders and codify the supervisory duty of the Member to ensure such customers abide by the requirements of Retail Orders, thus promoting the integrity of the retail order flow sent to the Exchange and acting as a deterrent to prevent potential abuse of the Retail Order designation. Accordingly, the proposed amendment to the requirements for Retail Orders would contribute to investors' confidence in the fairness of their transactions, prompting investors to send more retail order flow to the Exchange, which would subsequently benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery and promoting market transparency.

The Exchange believes that its proposal to amend Footnote 4 of its fee schedule to provide that a Member may attest that "substantially all" of the orders it submits to the Exchange qualify as Retail Orders is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the Member to attest that "substantially all" of its orders will qualify as Retail Orders. This de minimis relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted as Retail Orders would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow Members, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still utilize Retail Orders. By removing impediments to the characterizing of orders as Retail Orders, the proposed change would permit expanded access of Members and their retail customers to the potential rebate and tiered pricing offered to Retail Orders (Flag ZA and the Retail Tier in Footnote 4 of the Exchange's fee schedule).

In addition, the Exchange notes that the proposed amendment will render the Exchange's definition closer to the definitions utilized by the Exchange's competitors.²³

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

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

The Exchange believes that the proposed amendment to Footnote 4 of the Exchange's fee schedule would not burden intramarket competition because the ability to

²³ See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

submit Retail Orders would continue to be open to all Members that wish to send Retail Orders to the Exchange, including those that represent Retail Orders from another broker-dealer customer, requiring an attestation, as described above.

The Exchange believes that the proposed amendment would not burden intermarket competition because the proposed amendment is similar to that utilized by other market centers.²⁴ This amendment would increase transparency and promote the integrity of the retail order flow sent to the Exchange, which would stimulate Members to send more retail order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow.

The Exchange does not believe that the proposed amendment to the definition of Retail Order will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment, by increasing the level of participation of Retail Orders, would increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of allowing Retail Orders on an exchange market would result in better

²⁴ The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_form_nov_2012.pdf.

prices for retail investors, and benefits retail investors by expanding the capabilities of exchanges to encompass practices currently allowed on non-exchange venues.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²⁵ of the Act and Rule 19b-4(f)(6)²⁶ 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 (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.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

The Exchange believes that this proposal is non-controversial in that it is similar to rule changes undertaken by other exchanges.²⁷ The Exchange believes that Members should reap the benefits of the proposed amendments immediately, as it believes transparency would be enhanced and use of Retail Orders increased as a result of the promotion of the integrity of the retail order flow sent to the Exchange.

The Exchange believes the proposed rule change would not significantly affect the protection of investors or the public interest because the rule proposal is intended to codify a Member's supervisory duty with regard to a customer broker-dealer's usage of Retail Orders. This proposed amendment would, as previously stated, increase transparency and promote the integrity of the retail order flow sent to the Exchange, which would stimulate Members to send more retail order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow. In addition,

²⁷ The Exchange notes that its proposed attestation language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. *See, e.g.*, NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_for_m_nov_2012.pdf. With regard to the requirement that "substantially all" orders designated as Retail Orders meet the definition of Retail Orders, the Exchange notes that the Commission has recently approved identical language utilized by NYSE, NYSE MKT LLC, NASDAQ Stock Market LLC ("NASDAQ") and BATS Y-Exchange, Inc. ("BYX"). *See* Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

as outlined above, safeguards are in place that provide a backstop that would ensure the integrity of the retail order flow sent to the Exchange.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.²⁸

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)²⁹ of the Act and Rule 19b-4(f)(6) thereunder.³⁰ Waiver of the thirty (30) day delayed operative date would codify the requirements regarding submission of Retail Orders by broker-dealer customers of a Member and aid such Members in complying with the requirements immediately without further delay. Furthermore, waiver of the thirty (30) day pre-operative waiting period would not be harmful to investors because adequate safeguards are in place to prevent abuse of the retail order designation by Members. As discussed above, the proposed language to be added to Footnote 4 of the Exchange’s fee schedule defines the criteria for Members to meet to comply with the “Retail Order” definition if they represent Retail Orders from another broker-dealer customer. In addition, Footnote 4 provides criteria for all Members to meet to satisfy the “Retail Order” definition.³¹

Members must ensure that their broker-dealer customers comply with the requirements in

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ The Exchange notes that Members must continue to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a “Retail Order” complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange’s fee schedule.

Footnote 4 so that Members themselves can comply with the requirement. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, FINRA, on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA determines that a Member's supervisory procedures are inadequate, such Member would be subject to the disciplinary procedures of the Exchange.³² The Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

Furthermore, the Exchange submits that the addition of the language stating that "substantially all" orders designated as Retail Orders meet the definition of Retail Orders is non-controversial in that it does not present any policy issues that have not been previously considered by the Commission, but rather, is a minor change to the Exchange's existing rules that is consistent with the rules of other national securities exchanges. Specifically, the Exchange notes that the Commission has recently approved

³² As described in Chapter VIII of the Exchange's Rules.

identical language utilized by NYSE, NYSE MKT LLC, NASDAQ and BYX.³³ Waiver of the thirty (30) day delayed operative date would allow the Exchange to continue to compete with these exchanges as well as permit expanded access of Members and their retail customers to the potential rebate and tiered pricing (Flag ZA and the Retail Tier in Footnote 4 of the Exchange's fee schedule, respectively) benefitting Retail Orders without delay.

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.³⁴ Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

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

³³ See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2013-20 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-EDGX-2013-20. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2013-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to
delegated authority.³⁵

Kevin M. O'Neill
Deputy Secretary

³⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underlined

Deletions [bracketed]

EDGX Exchange Fee Schedule – Effective June [3] 13, 2013

* * * * *

¹⁻³ (No changes).

⁴ Where a Retail Order is defined as (i) an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that [every] substantially all orders designated by the Member as a “Retail Order” comply[ies] with the above requirements.

If the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

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