

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="33"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="40"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	--	--

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"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

EDGX Exchange, Inc. proposes to: (i) amend Rule 3.5, Advertising Practices; and (ii) repeal Rule 3.20, Initial or Partial Payments to conform with the rules of the Financial Industry Regulatory Authority, Inc.

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="Christopher"/>	Last Name * <input type="text" value="Solgan"/>
Title * <input type="text" value="Regulatory Counsel"/>	
E-mail * <input type="text" value="csolgan@directedge.com"/>	
Telephone * <input type="text" value="(201) 942-8321"/>	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="10/28/2013"/>	<input type="text" value="Regulatory Counsel"/>
By <input type="text" value="Christopher Solgan"/>	<input type="text" value=""/>
(Name *)	

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 *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, 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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² EDGX Exchange, Inc. (“EDGX” or the “Exchange”) proposes to: (i) amend Rule 3.5, Advertising Practices; and (ii) repeal Rule 3.20, Initial or Partial Payments to conform with the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act.³

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”). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁴

(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 Exchange submits the proposed rule change pursuant to authority delegated by the Board of Directors of the Exchange on April 27, 2010. Exchange staff will advise the Exchange’s Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change and, therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17d-2.

⁴ 17 CFR 240.19b-4(f)(6)(iii).

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

Christopher Solgan
Regulatory Counsel
EDGX Exchange, Inc.
201-942-8321

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

(a) Purpose

Pursuant to Rule 17d-2 under the Act,⁵ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the “17d-2 Agreement”). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) examination of common members of the Exchange and FINRA for compliance with federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of EDGX and FINRA for violations of federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with the federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁶

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes to: (i) amend Rule 3.5, Advertising Practices; and (ii) repeal Rule 3.20, Initial or Partial Payments.

Rule 3.5, Advertising Practices

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Members to comply with FINRA Rule 2210 as if such Rule were part of

⁵ 17 CFR 240.17d-2.

⁶ See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10-196).

the Exchange's Rules and to rename the rule "Communications with the Public."⁷ The proposed rule text is substantially the same as Rule 2210(a) of the Nasdaq Stock Market LLC ("Nasdaq"), which has been approved by the Commission.⁸

Currently, Exchange Rule 3.5(d) and (f) are excluded from the 17d-2 Agreement because they are not identical to, or substantially similar to, certain FINRA rules. First, Exchange Rule 3.5(d) requires that advertising and sales literature be pre-approved and signed or initialed by a supervisor while FINRA Rule 2210(b) only requires supervisory pre-approval for retail communication, and different supervisory review standards for institutional communication, and correspondence. Second, Rule 3.5(f) and FINRA Rule 2210(d)(6) also contain different content requirements for testimonials. Exchange Rules 3.5(d) and (f) were, therefore, excluded from the 17d-2 Agreement because their requirements were not identical or substantially similar to that required under FINRA Rule 2210(b) and (d)(6) respectively. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's Rules so that it may be incorporated into the 17d-2 Agreement in its entirety.

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rules 3.5 with FINRA Rule 2210. The proposed changes to Rule 3.5 are designed to enable the Exchange to incorporate Rule 3.5 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA.

Summary of FINRA Rule 2210

FINRA Rule 2210 generally sets forth the content, filing, supervisory review, and record retention for FINRA member's communications with the public. A summary of

⁷ The Exchange does not propose to require that Members comply with subparagraph (c) of FINRA Rule 2210. FINRA Rule 2210(c) generally requires that FINRA members file certain communications with FINRA. The Exchange believes that it is inappropriate for its rules to require Members to file certain communications with FINRA as such filing requirements under FINRA rules are between FINRA and its members.

⁸ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq's application for registration as a national securities exchange). See also Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-Nasdaq-2008-054) (Notice of Filing and Immediate Effectiveness).

FINRA Rule 2210 is below. A complete description of FINRA Rule 2210 is provided in FINRA's Regulatory Notice 12-29.⁹

FINRA Rule 2210 divides a member's communications with the public and divides into the following three separate categories:

- Institutional communication. FINRA Rule 2210(a)(3) defines "institutional communication" as "any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications."
- Retail communication. FINRA Rule 2210(a)(5) defines "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-day calendar period." "Retail investor" includes any person other than an institutional investor, regardless of whether the person has an account with the firm. Communications that are considered advertisements and sales literature fall under the definition of "retail communication."
- Correspondence. FINRA Rule 2210(a)(2) defines "correspondence" as "any written (including electronic) communication that is distributed or made available to fewer than 25 retail investors within any 30-day calendar period."

Supervisory Review. To comply with FINRA Rules 2210(b)'s supervisory requirements, common members must obtain supervisory pre-approval of all retail communications, while institutional communications and correspondence would be subject to supervisory review, but not pre-approval.

Under FINRA Rule 2210(b)(1), all retail communications must approved by a supervisory prior to its first use or filing with FINRA under FINRA Rule 2210(c). FINRA's Rule 2210(b)(1)'s supervisory requirements do not apply to a retail communication if, at the time that a member intends to publish or distribute it: (i) another member has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the member has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the FINRA's letter. The rule's supervisory review requirements also do not apply to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d): (i) any retail communication that is excepted from the definition of "research report" pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

⁹ See FINRA Regulatory Notice 12-29 (June 2012) available at http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice12_29.pdf.

For institutional communications, FINRA Rule 2210(b)(2) requires members establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

FINRA Rule 2210(b)(2) states that correspondence is subject to the supervision and review requirements of NASD Rule 3010(d). Under NASD Rule 3010(d)(2), each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business, including procedures to review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

Record Retention. Under FINRA Rule 2210(b)(4)(A), members must maintain all retail communications and institutional communications for the retention period required by Exchange Act Rule 17a-4(b) and in a format and media that comply with Exchange Act Rule 17a-4. The records must include:

- a copy of the communication and the dates of first and (if applicable) last use of such communication;
- the name of any registered principal who approved the communication and the date that approval was given;
- in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail

communication with the Department, and a copy of the corresponding review letter from the Department.

Filing Requirements. Like Nasdaq Rule 2210(a), Exchange Rule 3.5 would expressly state that Members would not be required to comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires FINRA members to file certain retail communications with FINRA prior to first use. Exchange Members who are also FINRA members would continue to be subject to FINRA Rule 2210(c).

Content Standards. FINRA Rule 2210(d) sets for general content standards for all communications. All Member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

Communications may also not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, communications may include: (i) a hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; (ii) an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214; and (iii) a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Testimonials. To comply with FINRA Rule 2210(d)(6): (i) testimonials that include the technical aspects of investing, the person making the testimonial must have the knowledge and expertise to form a valid opinion; and (ii) retail communications or correspondence providing any testimonial concerning investment advice or investment performance to prominently disclose that the testimonial: (a) may not be representative of the experience of other customers; (b) is no guarantee of future performance or success; and (c) is a paid testimonial, where more than \$100 in value has been paid.

Recommendations. FINRA Rule 2210(d)(7)(A) requires that retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis; (ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months. Members must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

Retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list: (i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and (ii) contains the following cautionary legend, which must appear prominently within the communication or list: “it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.”

Rule 3.20, Initial or Partial Payments

The Exchange also proposes to delete Rule 3.20, Initial or Partial Payments. In January 2010, FINRA repealed NASD Rule 2450, Initial or Partial Payments, and does not currently include a comparable rule in its rule book.¹⁰ Like NASD Rule 2450, Exchange Rule 3.20 prohibits any arrangement whereby the customer of a Member¹¹

¹⁰ See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (SR-FINRA-2009-093) (order approving proposal to repeal NASD Rule 2450).

¹¹ “Member” is defined as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the

submits partial or installment payments for the purchase of a security with the following exceptions: (1) if a Member is acting as agent or broker in such transaction, then the Member must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; (2) if a Member is acting as principal in such transaction, the member must, at the time of the transaction, own such security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; and (3) if applicable to the Member, the provisions of Regulation T¹² of the Federal Reserve Board are satisfied. The Rule also prohibits the Member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with the customer whereby the member would be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such Member.

Section 220.8 of Regulation T permits the purchase of a security in the cash account predicated on either (1) there being sufficient funds in the account or (2) the member accepts in good faith the customer's agreement that full cash payment will be made.¹³ The rule further stipulates that payment must be made within a specified payment period.¹⁴ Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

The Exchange proposes to repeal Exchange Rule 3.20 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. The Exchange also believes the hypothecation prohibition in Exchange Rule 3.20 would no longer be relevant because it is predicated on a partial or installment payment under the rule. The Exchange notes that, notwithstanding the repeal of Exchange Rule 3.20, Members are required to comply with all applicable federal securities laws, which includes Regulation T.

Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." Exchange Rule 1.5(n).

¹² Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 et seq.

¹³ See Regulation T 220.8(a)(1).

¹⁴ According to Section 220.2 of Regulation T, payment period "means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6-1 (17 CFR 240.15c6-1(a)), plus two business days."

(b) Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more efficient and effective Exchange Rulebook. The proposed rule change would provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement.

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)

¹⁵ 15 U.S.C. 78f(b)(5).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁶ of the Act and Rule 19b-4(f)(6)¹⁷ thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.¹⁸

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4¹⁹ because the proposed rule change would not adversely affect investors or the public interest; rather, the proposed rule change will promote greater harmonization between the Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. Additionally, the proposed rule change does not raise any new policy issues not previously considered by the Commission nor impose any significant burden on competition because it would result in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act²⁰ and paragraph (f)(6) of Rule 19b-4 thereunder.²¹

The Exchange further requests that the Commission waive the thirty (30) day operative delay to allow for an operative date effective upon filing. Waiver of the operative delay would allow the Exchange to promptly incorporate Rules 3.5 in its entirety into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA. Waiver of the operative delay would also enable the Exchange to repeal Rule 3.20 in a timely manner, thereby eliminating unnecessary and

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

obsolete rules from the Exchange's rulebook. In addition, waiving the 30-day operative delay would provide greater harmonization among Exchange and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement in a timelier manner.

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily 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.

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

The proposed amendments to Exchange Rule 3.5, Advertising Practices, are based on FINRA Rule 2210 and Nasdaq Rule 2210(a).

The proposed repeal of Exchange Rule 3.20, Initial or Partial Payments is based on the repeal of NASD Rule 2450.²²

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.

²² See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (SR-FINRA-2009-093) (order approving proposal to repeal NASD Rule 2450).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- _____ ; File No. SR-EDGX-2013-40)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 3.5, Advertising Practices; and repeal Rule 3.20, Initial or Partial Payments, to Conform with the Rules of the Financial Industry Regulatory Authority, Inc.

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 _____, 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 Rule 3.5, Advertising Practices; and (ii) repeal Rule 3.20, Initial or Partial Payments to conform with the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act.³ The text of the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17d-2.

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

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

Pursuant to Rule 17d-2 under the Act,⁴ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the "17d-2 Agreement"). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) examination of common members of the Exchange and FINRA for compliance with federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of EDGX and FINRA for violations of federal securities laws, rules or regulations, or Exchange rules that the Exchange has

⁴ 17 CFR 240.17d-2.

certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with the federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁵

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes to: (i) amend Rule 3.5, Advertising Practices; and (ii) repeal Rule 3.20, Initial or Partial Payments.

Rule 3.5, Advertising Practices

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's Rules and to rename the rule "Communications with the Public."⁶ The proposed rule text is substantially the same as Rule 2210(a) of the Nasdaq Stock Market LLC ("Nasdaq"), which has been approved by the Commission.⁷

⁵ See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10-196).

⁶ The Exchange does not propose to require that Members comply with subparagraph (c) of FINRA Rule 2210. FINRA Rule 2210(c) generally requires that FINRA members file certain communications with FINRA. The Exchange believes that it is inappropriate for its rules to require Members to file certain communications with FINRA as such filing requirements under FINRA rules are between FINRA and its members.

⁷ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq's application for registration as a national securities exchange). See also Securities Exchange Act Release No.

Currently, Exchange Rule 3.5(d) and (f) are excluded from the 17d-2 Agreement because they are not identical to, or substantially similar to, certain FINRA rules. First, Exchange Rule 3.5(d) requires that advertising and sales literature be pre-approved and signed or initialed by a supervisor while FINRA Rule 2210(b) only requires supervisory pre-approval for retail communication, and different supervisory review standards for institutional communication, and correspondence. Second, Rule 3.5(f) and FINRA Rule 2210(d)(6) also contain different content requirements for testimonials. Exchange Rules 3.5(d) and (f) were, therefore, excluded from the 17d-2 Agreement because their requirements were not identical or substantially similar to that required under FINRA Rule 2210(b) and (d)(6) respectively. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's Rules so that it may be incorporated into the 17d-2 Agreement in its entirety.

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rules 3.5 with FINRA Rule 2210. The proposed changes to Rule 3.5 are designed to enable the Exchange to incorporate Rule 3.5 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA.

Summary of FINRA Rule 2210

58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-Nasdaq-2008-054) (Notice of Filing and Immediate Effectiveness).

FINRA Rule 2210 generally sets forth the content, filing, supervisory review, and record retention for FINRA member's communications with the public. A summary of FINRA Rule 2210 is below. A complete description of FINRA Rule 2210 is provided in FINRA's Regulatory Notice 12-29.⁸

FINRA Rule 2210 divides a member's communications with the public and divides into the following three separate categories:

- Institutional communication. FINRA Rule 2210(a)(3) defines "institutional communication" as "any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications."
- Retail communication. FINRA Rule 2210(a)(5) defines "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-day calendar period." "Retail investor" includes any person other than an institutional investor, regardless of whether the person has an account with the firm. Communications that are considered advertisements and sales literature fall under the definition of "retail communication."
- Correspondence. FINRA Rule 2210(a)(2) defines "correspondence" as "any written (including electronic) communication that is distributed or made available to fewer than 25 retail investors within any 30-day calendar period."

⁸ See FINRA Regulatory Notice 12-29 (June 2012) available at http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice12_29.pdf.

Supervisory Review. To comply with FINRA Rules 2210(b)'s supervisory requirements, common members must obtain supervisory pre-approval of all retail communications, while institutional communications and correspondence would be subject to supervisory review, but not pre-approval.

Under FINRA Rule 2210(b)(1), all retail communications must be approved by a supervisor prior to its first use or filing with FINRA under FINRA Rule 2210(c). FINRA's Rule 2210(b)(1)'s supervisory requirements do not apply to a retail communication if, at the time that a member intends to publish or distribute it: (i) another member has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the member has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the FINRA's letter. The rule's supervisory review requirements also do not apply to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d): (i) any retail communication that is excepted from the definition of "research report" pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

For institutional communications, FINRA Rule 2210(b)(2) requires members to establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional

communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

FINRA Rule 2210(b)(2) states that correspondence is subject to the supervision and review requirements of NASD Rule 3010(d). Under NASD Rule 3010(d)(2), each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business, including procedures to review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and

surveillance and follow-up to ensure that such procedures are implemented and adhered to.

Record Retention. Under FINRA Rule 2210(b)(4)(A), members must maintain all retail communications and institutional communications for the retention period required by Exchange Act Rule 17a-4(b) and in a format and media that comply with Exchange Act Rule 17a-4. The records must include:

- a copy of the communication and the dates of first and (if applicable) last use of such communication;
- the name of any registered principal who approved the communication and the date that approval was given;
- in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department.

Filing Requirements. Like Nasdaq Rule 2210(a), Exchange Rule 3.5 would expressly state that Members would not be required to comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires FINRA members to file certain retail

communications with FINRA prior to first use. Exchange Members who are also FINRA members would continue to be subject to FINRA Rule 2210(c).

Content Standards. FINRA Rule 2210(d) sets for general content standards for all communications. All Member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

Communications may also not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, communications may include: (i) a hypothetical illustration

of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; (ii) an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214; and (iii) a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Testimonials. To comply with FINRA Rule 2210(d)(6): (i) testimonials that include the technical aspects of investing, the person making the testimonial must have the knowledge and expertise to form a valid opinion; and (ii) retail communications or correspondence providing any testimonial concerning investment advice or investment performance to prominently disclose that the testimonial: (a) may not be representative of the experience of other customers; (b) is no guarantee of future performance or success; and (c) is a paid testimonial, where more than \$100 in value has been paid.

Recommendations. FINRA Rule 2210(d)(7)(A) requires that retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis; (ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer

whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months. Members must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

Retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list: (i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and (ii) contains the following cautionary legend, which must appear prominently within the communication or list: “it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.”

Rule 3.20, Initial or Partial Payments

The Exchange also proposes to delete Rule 3.20, Initial or Partial Payments. In January 2010, FINRA repealed NASD Rule 2450, Initial or Partial Payments, and does not currently include a comparable rule in its rule book.⁹ Like NASD Rule 2450, Exchange Rule 3.20 prohibits any arrangement whereby the customer of a Member¹⁰ submits partial or installment payments for the purchase of a security with the following exceptions: (1) if a Member is acting as agent or broker in such transaction, then the Member must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; (2) if a Member is acting as principal in such transaction, the member must, at the time of the transaction, own such security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; and (3) if applicable to the Member, the provisions of Regulation T¹¹ of the Federal Reserve Board are satisfied. The Rule also prohibits the Member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with the customer

⁹ See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (SR-FINRA-2009-093) (order approving proposal to repeal NASD Rule 2450).

¹⁰ “Member” is defined as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.” Exchange Rule 1.5(n).

¹¹ Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 et seq.

whereby the member would be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such Member.

Section 220.8 of Regulation T permits the purchase of a security in the cash account predicated on either (1) there being sufficient funds in the account or (2) the member accepts in good faith the customer's agreement that full cash payment will be made.¹² The rule further stipulates that payment must be made within a specified payment period.¹³ Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

The Exchange proposes to repeal Exchange Rule 3.20 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. The Exchange also believes the hypothecation prohibition in Exchange Rule 3.20 would no longer be relevant because it is predicated on a partial or installment payment under the rule. The Exchange notes that, notwithstanding the repeal of Exchange Rule 3.20, Members are required to comply with all applicable federal securities laws, which includes Regulation T.

¹² See Regulation T 220.8(a)(1).

¹³ According to Section 220.2 of Regulation T, payment period “means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6-1 (17 CFR 240.15c6-1(a)), plus two business days.”

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more efficient and effective Exchange Rulebook. The proposed rule change would provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among similar Exchange and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for

¹⁴ 15 U.S.C. 78f(b)(5).

common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement.

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)¹⁵ of the Act and Rule 19b-4(f)(6)¹⁶ thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.¹⁷

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4¹⁸ because the proposed rule change would not adversely affect investors or the public interest; rather, the proposed rule change will promote greater harmonization between the Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. Additionally, the proposed rule change does not raise any new policy issues not previously considered by the Commission nor impose any significant burden on competition because it would result in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.²⁰

The Exchange further requests that the Commission waive the thirty (30) day operative delay to allow for an operative date effective upon filing. Waiver of the operative delay would allow the Exchange to promptly incorporate Rules 3.5 in its entirety into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA. Waiver of the operative delay would also enable the Exchange to repeal Rule 3.20 in a timely manner, thereby eliminating unnecessary and

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

obsolete rules from the Exchange's rulebook. In addition, waiving the 30-day operative delay would provide greater harmonization among Exchange and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement in a timelier manner.

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2013-40 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-2013-40. 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-2013-40 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in [brackets].

Rules of EDGX Exchange, Inc.

CHAPTER III. RULES OF FAIR PRACTICE

Rules 3.1 – 3.4. (No change).

Rule 3.5. [~~Advertising Practices~~]Communications with the Public

Members and persons associated with a Member shall comply with FINRA Rule 2210 (except FINRA Rule 2210(c)) as if such Rule were part of the Exchange's Rules. The Exchange and FINRA are parties to an agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Members are complying with Exchange Rule 3.5 by complying with FINRA Rule 2210 as written. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Exchange Rule 3.5 are being performed by FINRA on the Exchange's behalf.

[(a) No Member, directly or indirectly, in connection with the purchase or sale of any security that has listed or unlisted trading privileges on the Exchange, shall publish, circulate or distribute any advertisement, sales literature or market letter or make oral statements or presentations which the Member knows, or in the exercise of reasonable care should know, contain any untrue statement of material fact or which is otherwise false or misleading. Exaggerated or misleading statements or claims are prohibited.

(b) Advertisements, sales literature and market letters shall contain the name of the Member, the person or firm preparing the material, if other than the Member, and the date on which it was first published, circulated or distributed (except that in advertisements only the name of the Member need be stated).

(c) No cautionary statements or caveats, often called hedge clauses, may be used if they could mislead the reader or are inconsistent with the content of the material.

(d) Each item of advertising and sales literature and each market letter shall be approved by signature or initial, prior to use, by an officer, partner or other official the Member has designated to supervise all such matters.

(e) A separate file of all advertisements sales literature and market letters, including the names of the persons who prepared them and/or approved their use, shall be maintained by the Member for a period of three years from the date of each use (for the first two years in a place readily accessible to examination or spot checks). Each Member shall file with the Exchange, or the designated self-regulatory organization for such Member, within five business days after initial use, each advertisement (i.e., any material for use in any newspaper or magazine or other public media or by radio, telephone, recording, motion picture or television, except tombstone

advertisements), unless such advertisement may be published under the rules of another self-regulatory organization regulating the Member under the Act.

(f) Testimonial material based on experience with the Member or concerning any advice, analysis, report or other investment related service rendered by the Member must make clear that such testimony is not necessarily indicative of future performance or results obtained by others. Testimonials also shall state whether any compensation has been paid to the maker, directly or indirectly, and if the material implies special experience or expert opinion, the qualifications of the maker of the testimonial should be given.

(g) Any statement to the effect that a report or analysis or other service will be furnished free or without any charge shall not be made unless such report or analysis or other service actually is or will be furnished entirely free and without condition or obligation.

(h) No claim or implication may be made for research or other facilities beyond those which the Member actually possesses or has reasonable capacity to provide.]

Rules 3.6 – 3.19. (No change).

Rule 3.20. Reserved[Installment or Partial Payments

(a) No Member shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer, or for the sale of any security to the customer, where payment for the security is to be made to the Member by the customer over a period of time in installments or by a series or partial payments, unless:

(1) in the event such Member acts as an agent or broker in such transaction, the Member promptly shall make an actual purchase of the security for the account of the customer, take possession or control of such security and maintain possession or control thereof so long as the Member remains under an obligation to deliver the security to the customer;

(2) in the event such Member acts as a Principal in such transaction, the Member shall own, at the time of such transaction, such security and shall maintain possession or control thereof so long as he remains under an obligation to deliver the security to the customer; and

(3) if applicable to such Member, the provisions of Regulation T of the Federal Reserve Board shall be satisfied.

(b) No Member, whether acting as Principal or agent, shall make, in connection with any transaction referred to in this Rule, any agreement with his customer under which such Member shall be allowed to pledge or hypothecate any security involved in such transaction in contravention of Commission Rules 8c-1 and 15c3-3.]

* * * * *