

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * <input type="text" value="30"/> | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4 | File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="45"/> | 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

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|--|--------------------------------------|-------------------------------------|---|---|--|
| 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)           |  |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010<br>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<br>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 \*).

**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.

|  |   |
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| First Name * <input type="text" value="Chris"/>              | 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 \*)

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| Date <input type="text" value="12/06/2013"/> | <input type="text" value="Regulatory Counsel"/> |
| By <input type="text" value="Chris 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 \***

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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 \***

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**

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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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> EDGX Exchange, Inc. (“EDGX” or the “Exchange”) proposes to amend paragraph (d)(3) of Rule 11.12 to provide Members<sup>3</sup> with additional time within which to submit a written claim for compensation for “losses resulting directly from the malfunction of the Exchange’s physical equipment, devices and/or programming or the negligent acts or omissions of its employees” (“Exchange Systems Issues”).

In addition, the Exchange proposes to add a new paragraph (e) to Rule 11.12 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through its affiliated routing broker-dealer, Direct Edge ECN LLC (d/b/a/ DE Route) (“DE Route”), to Trading Centers<sup>4</sup> where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers (“Trading Center Systems Issue”).

The Exchange has designated the proposed rule change as non-controversial and provided the Securities and Exchange Commission (“SEC” or the “Commission”) with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>5</sup>

(b) The Exchange does not believe that the proposed rule change will have any direct or significant indirect effect on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

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

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

<sup>3</sup> The term “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.” See Exchange Rule 1.5(n).

<sup>4</sup> Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See also Exchange Rule 2.11(a).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

2. Procedures of the Self-Regulatory Organization

The proposed rule change to add new paragraph (e) to Rule 11.12 was approved by the Board of Directors of the Exchange on December 12, 2011. The proposed amendment to paragraph (d)(3) of Rule 11.12 was approved by the Board of Directors of the Exchange on July 10, 2013. No other action is necessary for the filing of the proposed rule changes.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

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

The Exchange proposes to amend Rule 11.12 to: (i) amend paragraph (d)(3) to provide Members with additional time within which to submit a written claim for compensation for Exchange Systems Issues; and (ii) add a new paragraph (e) permitting the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through DE Route to Trading Centers where such losses are claimed by the Member to have resulted directly from a Trading Center Systems Issue.

Extension of Deadline to Submit Claims

Rule 11.12 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.12(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for Exchange Systems Issues, subject to certain conditions. Subsection (d)(1) of Rule 11.12 states that for the aggregate of all claims made by all market participants related to the use of the Exchange during a single calendar month, the Exchange's payments under Rule 11.12 shall not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

Currently, Rule 11.12(d)(3) requires Members to submit claims for compensation to the Exchange by 12:00 p.m. Eastern Time on the business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange proposes to extend the deadline to submit a claim to no later than 4:00 p.m. Eastern Time, or 1:00

p.m. in the event of an early market close,<sup>6</sup> on the second business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). The expansion of time to submit compensation claims should, therefore, increase the likelihood that Members will be able to submit claims to the Exchange in a timely manner.

#### Reimbursement for Losses Sustained at Trading Centers

The Exchange also proposes to amend Exchange Rule 11.12 to add a new paragraph (e) that would authorize the Exchange, subject to express conditions and limitations, to compensate Members for losses relating to orders routed by the Exchange through DE Route to Trading Centers that the Member claims resulted directly from a Trading Center Systems Issue.

The Exchange believes that the proposed rule change will provide a remedy, not currently available under Rule 11.12, to Members that experience losses due to Trading Center Systems Issues after DE Route routed the Members' orders to a Trading Center that experienced such issues. The Exchange's authority to compensate Members for losses under Rule 11.12(d) only covers losses incurred as a result of Exchange Systems Issues, and does not currently extend to Trading Center Systems Issues. Even if the Exchange, via DE Route, were to seek and receive compensation on behalf of a Member from a Trading Center relating to a Trading Center Systems Issue, it does not currently have the authority to, in turn, pass such compensation along to the affected Member. The Exchange, therefore, proposes to add a new paragraph (e) to Rule 11.12 as an accommodation to Members, whereby the Exchange, via DE Route, would employ reasonable efforts to submit Members' claims for compensation on such Members' behalf to a Trading Center, and pass along to such Members the full amount of compensation, if any, obtained by DE Route from such Trading Center.<sup>7</sup>

Under proposed Rule 11.12(e), the Exchange would undertake to accept claims for losses submitted by Members, which claims must contain representations from such

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<sup>6</sup> Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1:00 p.m. Eastern Time on the day after Thanksgiving and on Christmas Eve, unless Christmas Eve happens to fall on a weekend. See, e.g., Direct Edge Trading Notice #13-47: Market Holiday Reminder – Thanksgiving. <http://www.directedge.com/About/exchangenotices/ViewNewsletterDetail.aspx?NewsletterID=1143>.

<sup>7</sup> DE Route is considered a facility of the Exchange, and, therefore, claims for compensation due to an Exchange Systems Issue experienced by DE Route must be submitted in accordance with Exchange Rule 11.12(d).

Members as to the accuracy of the information contained therein and that any losses incurred were the direct result of a Trading Center Systems Issue.<sup>8</sup> The Exchange would employ reasonable efforts to submit such claims, via DE Route, to the Trading Center in question. If and to the extent that DE Route were to receive compensation from a Trading Center in response to a claim submitted on behalf of a Member, the full amount of such compensation would be passed through to the Member.

Proposed Rule 11.12(e)(1) would require that a Member seeking compensation for a loss due to a Trading Center Systems Issue must submit its claim to the Exchange in writing. The proposed rule would not include a specific deadline by which Members must submit claims for compensation. The Exchange notes that Trading Centers that are national securities exchanges impose different deadlines by which their Members must submit claims for compensation,<sup>9</sup> and that many Trading Centers that are not national securities exchanges either do not impose any deadline or otherwise handle requests for compensation on a case-by-case basis. It is, therefore, incumbent on, and the sole responsibility of, the Member to submit claims to the Exchange in a timely manner so that the Exchange may then forward such claim, via DE Route, in advance of any deadline required by that Trading Center. Upon receipt of a Member's claim, the Exchange would only verify that a valid order was submitted by the Member and accepted and acknowledged by the Exchange, that the Member's order or a portion of the order was routed by the Exchange via DE Route to a Trading Center, and that the Member represented that it incurred a loss as a result of a Trading Center Systems Issue. The Exchange would then use reasonable efforts to forward the claim, via DE Route, to such Trading Center.

Proposed Rule 11.12(e)(2) would state that the Exchange would pass along to the Member the full amount of any compensation that the Exchange, via DE Route, received from a Trading Center as a result of a claim submitted on behalf of the Member. Any compensation paid to the Member would be paid solely from the compensation, if any, recovered from that Trading Center and not from any other source.

Proposed Rule 11.12(e)(3) would account for the circumstance where more than one Member submitted a claim for loss resulting from the same Trading Center Systems Issue and the total amount of compensation received from the Trading Center is

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<sup>8</sup> Members receive reports from the Exchange shortly after a trade is consummated indicating whether their order, or a portion thereof, was executed at a Trading Center. The report will indicate the size and price of the execution on the Trading Center.

<sup>9</sup> See Nasdaq Stock Market LLC Rule 4626 (requiring claims for compensation to be submitted by 12:00 p.m. Eastern Time on T+1). See also NYSE Arca, Inc. Options Rule 14.2, NYSE MKT LLC Rule 905NY, Chicago Board Options Exchange, Incorporated Rule 6.7, BATS Exchange, Inc. Rule 11.16, and BATS-Y Exchange, Inc. Rule 11.16 (requiring claims for compensation to be submitted by the open of regular trading hours on T+1).

insufficient to fully satisfy the claims of all such Members. In such case, the Exchange would proportionally allocate the total amount received from the Trading Center, if any, among all such Members' claims based on the proportion that each such claim bears to the sum of all such claims. The Exchange believes that this provision will provide for equitable compensation among all Members that submit a valid claim related to a Trading Center Systems Issue by ensuring that Members are compensated on a pro rata basis.

The payment of claims submitted in response to an Exchange Systems Issue would be separate and apart from any pass-through of compensation paid due to a Trading Center Systems Issue. Proposed Rule 11.12(e)(4) would state that any pass-through of compensation to a Member in accordance with Rule 11.12(e) would be unrelated to any other claims for compensation that are made due to an Exchange Systems Issues under Exchange Rule 11.12(d)(3). Accordingly, proposed Rule 11.12(e)(4) would state that any compensation paid to Members from reimbursement recovered from a Trading Center would not count against the Exchange's \$500,000 monthly liability limit set forth in Rule 11.12(d)(1), nor any applicable insurance maintained by the Exchange.

Notwithstanding the foregoing, the Exchange is not proposing to undertake or assume any responsibility to: (1) independently validate information submitted by a Member in connection with a claim for compensation for loss arising out of a Trading Center Systems Issue, other than the ticker, size and side of the affected orders and the Trading Center to which the affected orders were routed and alleged to have experienced a Trading Center Systems Issue; (2) ascertain or comply with any mandatory deadlines within which to submit claims for compensation to a Trading Center; (3) guarantee that any compensation will be procured from a Trading Center; (4) negotiate agreements with any Trading Centers to require compensation under any circumstances; or (5) take any additional steps with respect to a Trading Center Systems Issue if such Trading Center denies or fails to respond to any claim for compensation, in whole or in part. In other words, the Exchange will, upon receipt of a claim for compensation from a Member for loss resulting from a Trading Center Systems Issue, reasonably endeavor to submit such claim, via DE Route, to the applicable Trading Center as soon as reasonably practicable, and if DE Route in turns receives an accommodation from such Trading Center, such accommodation will be passed along to the Member via the Exchange. Neither the Exchange nor DE Route will be under any obligation to know any Trading Center's rules, procedures and/or customs, to the extent any exist, for the submission of claims for compensation, nor to dispute a Trading Center's denial of a claim, whether in whole or in part, nor to take any further actions with respect to such claim in the event that the Trading Center does not respond at all to the claim. Accordingly, with this proposed rule change, the Exchange is not assuming any additional liability to Members for losses claimed to have resulted from Trading Center Systems Issues; rather, it proposes to serve a purely ministerial role, given the contractual privity that exists between DE Route and Trading Centers, in the submission of Members' claims for compensation to such Trading Centers on their behalf. To that end, proposed Rule 11.12(e)(5) would make clear that under no circumstances will the Exchanges' inability to procure compensation

from a Trading Center, in whole or in part, for whatever reason, give rise to a claim for compensation from the Exchange pursuant to paragraph (d) of Rule 11.12 as a “negligent act or omission of an Exchange employee.” Proposed Rule 11.12(e)(5) would further state that the Exchange would not be liable should the Trading Center deny such claim made pursuant to proposed Rule 11.12(e), in whole or in part, for any reason.

The Exchange believes that the provisions outlined in the above paragraph are equitable because any claim submitted under the proposed Rule 11.12(e) would be subject to the rules, procedures, and discretion of the Trading Center in question. It is the Trading Center, and not the Exchange or DE Route, that ultimately decides whether to approve or deny a Member’s claim, or even whether to act on such request at all. For example, the Exchange has no discretion over or responsibility for the information provided by the Member in its claim, and no discretion over or responsibility for whether such information is sufficient for the Trading Center to provide compensation. In addition, any claim submitted under the proposal would be subject to compensation only to the extent that the Trading Center provided such compensation to DE Route. Accordingly, because it is the Trading Center, and not the Exchange or DE Route, that ultimately decides whether a claim for compensation would be granted, the Exchange believes the proposal is fair and just in limiting the Exchange’s liability in the event a Trading Center determines, for any reason, to deny a claim, in whole or in part, or even not to respond to such claim.

#### Implementation Date

The Exchange intends to implement the proposed rule changes no later than January 15, 2014 and will announce its availability via a trading notice to be posted on the Exchange’s website.

#### (b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in that it is designed promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### Extension of Deadline to Submit Claims

Extending the deadline by which claims for compensation are submitted to the Exchange is designed to increase the likelihood that Members will be able to submit

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

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



claims in a timely manner. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). Therefore, the Exchange believes the proposed rule change is equitable and will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue.

#### Reimbursement for Losses Sustained at other Trading Centers

Proposed Rule 11.12(e) would enable the Exchange to pass through to Members any compensation that the Exchange is able to procure, via DE Route, from a Trading Center for losses claimed by Members to have resulted from a Trading Center Systems Issue. The proposal specifies a standardized method for Members to submit claims for compensation from a Trading Center, and for the Exchange to pass through to its Members any such compensation obtained, if and to the extent the Exchange, via DE Route, is able to obtain such compensation from the Trading Center. Furthermore, any compensation obtained by the Exchange from a Trading Center would be passed on to the Member who requested such reimbursement. If the amount received by the Exchange from the Trading Center was insufficient to satisfy all claims, it would be allocated among the claimants proportionally based on the percentage that each claimant's claim in relation to the sum of all claims received by the Exchange. In addition, the proposed pro-rata allocation methodology that the Exchange would employ would provide for equitable compensation among all Members who submit a claim related to a Trading Center Systems Issue and deter the risk of preferential treatment of certain Members by the Exchange. Therefore, the Exchange believes that the proposed rule change would protect investors and the public interest by potentially providing Members with a remedy not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities.

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

The proposed rule change would not impose any burden on competition. The proposed rule change is designed to promote fairness in the marketplace by increasing the time within which a Member is to submit claims for Exchange System Issues and to be compensated for losses that result from Trading Center Systems Issues. The Exchange believes that the proposed rule changes will not burden intermarket competition because the benefits offered under the proposed rule changes are not currently offered by any other exchange. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same deadline to submit a claim for Exchange Systems Issues and be able to submit claims for reimbursement for certain losses incurred due to Trading Center System Issues.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five (5) business days prior to the date of filing.<sup>14</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>15</sup> because extending the deadline by which claims for compensation are to be submitted to the Exchange for Exchange System Issues would allow Members to submit claims for compensation in a timely manner. The Exchange believes that such expansion of time would protect investors and the public interest given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). Therefore, the Exchange believes the proposed rule changes will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue. In addition, permitting the Exchange to reimburse Members for losses attributable to Trading Center System Issues

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

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

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

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

is also designed to protect investors and the public interest by providing Members with a remedy not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

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 is consistent with the protection of investors and the public interest because it would allow the Exchange to promptly extend the deadline by which claims for compensation must be submitted under Rule 11.12(d). Doing so would increase the likelihood that Members will be able to submit such claims in a timely manner should an Exchange Systems Issue occur during the 30-day operative delay period. In addition, waiver of the 30-day operative delay would protect investors and the public interest by permitting Members to submit claims, and potentially be reimbursed, for losses due to Trading Center Systems Issues that may occur during that 30-day operative delay period.

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

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

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

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

(a) – (e) Not applicable.

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

(a) – (e) Not applicable.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

11. Exhibits

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

Exhibit 5 – Text of the proposed rule change.

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- \_\_\_\_\_ ; File No. SR-EDGX-2013-45)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.12, Limitations of Liability

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, 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 paragraph (d)(3) of Rule 11.12 to provide Members<sup>3</sup> with additional time within which to submit a written claim for compensation for “losses resulting directly from the malfunction of the Exchange’s physical equipment,

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

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

<sup>3</sup> The term “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.” See Exchange Rule 1.5(n).

devices and/or programming or the negligent acts or omissions of its employees” (“Exchange Systems Issues”).

In addition, the Exchange proposes to add a new paragraph (e) to Rule 11.12 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through its affiliated routing broker-dealer, Direct Edge ECN LLC (d/b/a/ DE Route) (“DE Route”), to Trading Centers<sup>4</sup> where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers (“Trading Center Systems Issue”).

All of the changes described herein are applicable to Members.<sup>5</sup> The text of the proposed rule change is available on the Exchange’s Internet website at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office, and at the Public Reference Room of the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and

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<sup>4</sup> Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See also Exchange Rule 2.11(a).

<sup>5</sup> A Member is any registered broker or dealer, or any person associated with a registered broker or dealer that has been admitted to membership in the Exchange.

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

The Exchange proposes to amend Rule 11.12 to: (i) amend paragraph (d)(3) to provide Members with additional time within which to submit a written claim for compensation for Exchange Systems Issues; and (ii) add a new paragraph (e) permitting the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through DE Route to Trading Centers where such losses are claimed by the Member to have resulted directly from a Trading Center Systems Issue.

Extension of Deadline to Submit Claims

Rule 11.12 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.12(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for Exchange Systems Issues, subject to certain conditions. Subsection (d)(1) of Rule 11.12 states that for the aggregate of all claims made by all market participants related to the use of the Exchange during a single calendar month, the Exchange's payments under Rule 11.12 shall not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

Currently, Rule 11.12(d)(3) requires Members to submit claims for compensation to the Exchange by 12:00 p.m. Eastern Time on the business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange proposes to extend the deadline to submit a claim to no later than 4:00 p.m. Eastern Time, or 1:00 p.m. in the event of an early market close,<sup>6</sup> on the second business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). The expansion of time to submit compensation claims should, therefore, increase the likelihood that Members will be able to submit claims to the Exchange in a timely manner.

#### Reimbursement for Losses Sustained at Trading Centers

The Exchange also proposes to amend Exchange Rule 11.12 to add a new paragraph (e) that would authorize the Exchange, subject to express conditions and limitations, to compensate Members for losses relating to orders routed by the Exchange through DE Route to Trading Centers that the Member claims resulted directly from a Trading Center Systems Issue.

The Exchange believes that the proposed rule change will provide a remedy, not

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<sup>6</sup> Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1:00 p.m. Eastern Time on the day after Thanksgiving and on Christmas Eve, unless Christmas Eve happens to fall on a weekend. See, e.g., Direct Edge Trading Notice #13-47: Market Holiday Reminder – Thanksgiving. <http://www.directedge.com/About/exchangenotices/ViewNewsletterDetail.aspx?NewsletterID=1143>.



currently available under Rule 11.12, to Members that experience losses due to Trading Center Systems Issues after DE Route routed the Members' orders to a Trading Center that experienced such issues. The Exchange's authority to compensate Members for losses under Rule 11.12(d) only covers losses incurred as a result of Exchange Systems Issues, and does not currently extend to Trading Center Systems Issues. Even if the Exchange, via DE Route, were to seek and receive compensation on behalf of a Member from a Trading Center relating to a Trading Center Systems Issue, it does not currently have the authority to, in turn, pass such compensation along to the affected Member. The Exchange, therefore, proposes to add a new paragraph (e) to Rule 11.12 as an accommodation to Members, whereby the Exchange, via DE Route, would employ reasonable efforts to submit Members' claims for compensation on such Members' behalf to a Trading Center, and pass along to such Members the full amount of compensation, if any, obtained by DE Route from such Trading Center.<sup>7</sup>

Under proposed Rule 11.12(e), the Exchange would undertake to accept claims for losses submitted by Members, which claims must contain representations from such Members as to the accuracy of the information contained therein and that any losses incurred were the direct result of a Trading Center Systems Issue.<sup>8</sup> The Exchange would employ reasonable efforts to submit such claims, via DE Route, to the Trading Center in

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<sup>7</sup> DE Route is considered a facility of the Exchange, and, therefore, claims for compensation due to an Exchange Systems Issue experienced by DE Route must be submitted in accordance with Exchange Rule 11.12(d).

<sup>8</sup> Members receive reports from the Exchange shortly after a trade is consummated indicating whether their order, or a portion thereof, was executed at a Trading Center. The report will indicate the size and price of the execution on the Trading Center.

question. If and to the extent that DE Route were to receive compensation from a Trading Center in response to a claim submitted on behalf of a Member, the full amount of such compensation would be passed through to the Member.

Proposed Rule 11.12(e)(1) would require that a Member seeking compensation for a loss due to a Trading Center Systems Issue must submit its claim to the Exchange in writing. The proposed rule would not include a specific deadline by which Members must submit claims for compensation. The Exchange notes that Trading Centers that are national securities exchanges impose different deadlines by which their Members must submit claims for compensation,<sup>9</sup> and that many Trading Centers that are not national securities exchanges either do not impose any deadline or otherwise handle requests for compensation on a case-by-case basis. It is, therefore, incumbent on, and the sole responsibility of, the Member to submit claims to the Exchange in a timely manner so that the Exchange may then forward such claim, via DE Route, in advance of any deadline required by that Trading Center. Upon receipt of a Member's claim, the Exchange would only verify that a valid order was submitted by the Member and accepted and acknowledged by the Exchange, that the Member's order or a portion of the order was routed by the Exchange via DE Route to a Trading Center, and that the Member represented that it incurred a loss as a result of a Trading Center Systems Issue. The Exchange would then use reasonable efforts to forward the claim, via DE Route, to

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<sup>9</sup> See Nasdaq Stock Market LLC Rule 4626 (requiring claims for compensation to be submitted by 12:00 p.m. Eastern Time on T+1). See also NYSE Arca, Inc. Options Rule 14.2, NYSE MKT LLC Rule 905NY, Chicago Board Options Exchange, Incorporated Rule 6.7, BATS Exchange, Inc. Rule 11.16, and BATS-Y Exchange, Inc. Rule 11.16 (requiring claims for compensation to be submitted by the open of regular trading hours on T+1).

such Trading Center.

Proposed Rule 11.12(e)(2) would state that the Exchange would pass along to the Member the full amount of any compensation that the Exchange, via DE Route, received from a Trading Center as a result of a claim submitted on behalf of the Member. Any compensation paid to the Member would be paid solely from the compensation, if any, recovered from that Trading Center and not from any other source.

Proposed Rule 11.12(e)(3) would account for the circumstance where more than one Member submitted a claim for loss resulting from the same Trading Center Systems Issue and the total amount of compensation received from the Trading Center is insufficient to fully satisfy the claims of all such Members. In such case, the Exchange would proportionally allocate the total amount received from the Trading Center, if any, among all such Members' claims based on the proportion that each such claim bears to the sum of all such claims. The Exchange believes that this provision will provide for equitable compensation among all Members that submit a valid claim related to a Trading Center Systems Issue by ensuring that Members are compensated on a pro rata basis.

The payment of claims submitted in response to an Exchange Systems Issue would be separate and apart from any pass-through of compensation paid due to a Trading Center Systems Issue. Proposed Rule 11.12(e)(4) would state that any pass-through of compensation to a Member in accordance with Rule 11.12(e) would be unrelated to any other claims for compensation that are made due to an Exchange Systems Issues under Exchange Rule 11.12(d)(3). Accordingly, proposed Rule 11.12(e)(4) would state that any compensation paid to Members from reimbursement recovered from a Trading Center would not count against the Exchange's \$500,000

monthly liability limit set forth in Rule 11.12(d)(1), nor any applicable insurance maintained by the Exchange.

Notwithstanding the foregoing, the Exchange is not proposing to undertake or assume any responsibility to: (1) independently validate information submitted by a Member in connection with a claim for compensation for loss arising out of a Trading Center Systems Issue, other than the ticker, size and side of the affected orders and the Trading Center to which the affected orders were routed and alleged to have experienced a Trading Center Systems Issue; (2) ascertain or comply with any mandatory deadlines within which to submit claims for compensation to a Trading Center; (3) guarantee that any compensation will be procured from a Trading Center; (4) negotiate agreements with any Trading Centers to require compensation under any circumstances; or (5) take any additional steps with respect to a Trading Center Systems Issue if such Trading Center denies or fails to respond to any claim for compensation, in whole or in part. In other words, the Exchange will, upon receipt of a claim for compensation from a Member for loss resulting from a Trading Center Systems Issue, reasonably endeavor to submit such claim, via DE Route, to the applicable Trading Center as soon as reasonably practicable, and if DE Route in turns receives an accommodation from such Trading Center, such accommodation will be passed along to the Member via the Exchange. Neither the Exchange nor DE Route will be under any obligation to know any Trading Center's rules, procedures and/or customs, to the extent any exist, for the submission of claims for compensation, nor to dispute a Trading Center's denial of a claim, whether in whole or in part, nor to take any further actions with respect to such claim in the event that the Trading Center does not respond at all to the claim. Accordingly, with this proposed rule

change, the Exchange is not assuming any additional liability to Members for losses claimed to have resulted from Trading Center Systems Issues; rather, it proposes to serve a purely ministerial role, given the contractual privity that exists between DE Route and Trading Centers, in the submission of Members' claims for compensation to such Trading Centers on their behalf. To that end, proposed Rule 11.12(e)(5) would make clear that under no circumstances will the Exchanges' inability to procure compensation from a Trading Center, in whole or in part, for whatever reason, give rise to a claim for compensation from the Exchange pursuant to paragraph (d) of Rule 11.12 as a "negligent act or omission of an Exchange employee." Proposed Rule 11.12(e)(5) would further state that the Exchange would not be liable should the Trading Center deny such claim made pursuant to proposed Rule 11.12(e), in whole or in part, for any reason.

The Exchange believes that the provisions outlined in the above paragraph are equitable because any claim submitted under the proposed Rule 11.12(e) would be subject to the rules, procedures, and discretion of the Trading Center in question. It is the Trading Center, and not the Exchange or DE Route, that ultimately decides whether to approve or deny a Member's claim, or even whether to act on such request at all. For example, the Exchange has no discretion over or responsibility for the information provided by the Member in its claim, and no discretion over or responsibility for whether such information is sufficient for the Trading Center to provide compensation. In addition, any claim submitted under the proposal would be subject to compensation only to the extent that the Trading Center provided such compensation to DE Route. Accordingly, because it is the Trading Center, and not the Exchange or DE Route, that ultimately decides whether a claim for compensation would be granted, the Exchange

believes the proposal is fair and just in limiting the Exchange's liability in the event a Trading Center determines, for any reason, to deny a claim, in whole or in part, or even not to respond to such claim.

#### Implementation Date

The Exchange intends to implement the proposed rule changes no later than January 15, 2014 and will announce its availability via a trading notice to be posted on the Exchange's website.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in that it is designed promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### Extension of Deadline to Submit Claims

Extending the deadline by which claims for compensation are submitted to the Exchange is designed to increase the likelihood that Members will be able to submit claims in a timely manner. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the

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

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

required current timeframe under Rule 11.12(d). Therefore, the Exchange believes the proposed rule change is equitable and will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue.

#### Reimbursement for Losses Sustained at other Trading Centers

Proposed Rule 11.12(e) would enable the Exchange to pass through to Members any compensation that the Exchange is able to procure, via DE Route, from a Trading Center for losses claimed by Members to have resulted from a Trading Center Systems Issue. The proposal specifies a standardized method for Members to submit claims for compensation from a Trading Center, and for the Exchange to pass through to its Members any such compensation obtained, if and to the extent the Exchange, via DE Route, is able to obtain such compensation from the Trading Center. Furthermore, any compensation obtained by the Exchange from a Trading Center would be passed on to the Member who requested such reimbursement. If the amount received by the Exchange from the Trading Center was insufficient to satisfy all claims, it would be allocated among the claimants proportionally based on the percentage that each claimant's claim in relation to the sum of all claims received by the Exchange. In addition, the proposed pro-rata allocation methodology that the Exchange would employ would provide for equitable compensation among all Members who submit a claim related to a Trading Center Systems Issue and deter the risk of preferential treatment of certain Members by the Exchange. Therefore, the Exchange believes that the proposed rule change would protect investors and the public interest by potentially providing Members with a remedy

not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities.

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

The proposed rule change would not impose any burden on competition. The proposed rule change is designed to promote fairness in the marketplace by increasing the time within which a Member is to submit claims for Exchange System Issues and to be compensated for losses that result from Trading Center Systems Issues. The Exchange believes that the proposed rule changes will not burden intermarket competition because the benefits offered under the proposed rule changes are not currently offered by any other exchange. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same deadline to submit a claim for Exchange Systems Issues and be able to submit claims for reimbursement for certain losses incurred due to Trading Center System Issues.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B)

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

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



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 (5) business days prior to the date of filing.<sup>14</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>15</sup> because extending the deadline by which claims for compensation are to be submitted to the Exchange for Exchange System Issues would allow Members to submit claims for compensation in a timely manner. The Exchange believes that such expansion of time would protect investors and the public interest given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). Therefore, the Exchange believes the proposed rule changes will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue. In addition, permitting the Exchange to reimburse Members for losses attributable to Trading Center System Issues

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

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

is also designed to protect investors and the public interest by providing Members with a remedy not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

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

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2013-45 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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-2013-45. 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-2013-45 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.<sup>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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

## EXHIBIT 5

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

## CHAPTER XI. TRADING RULES

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## Rule 11.12. LIMITATION OF LIABILITY

(a) – (d)(2) (No changes).

- (3) ALL CLAIMS FOR COMPENSATION PURSUANT TO THIS RULE SHALL BE IN WRITING AND MUST BE SUBMITTED NO LATER THAN [12]4:00 P.M. EASTERN TIME ON THE [NEXT]SECOND BUSINESS DAY FOLLOWING THE DAY ON WHICH THE USE OF THE EXCHANGE GAVE RISE TO SUCH CLAIMS, OR NO LATER THAN 1:00 P.M. EASTERN TIME IN THE EVENT OF AN EARLY MARKET CLOSE ON THE SECOND BUSINESS DAY FOLLOWING THE DAY ON WHICH THE USE OF THE EXCHANGE GAVE RISE TO SUCH CLAIMS.

ONCE IN RECEIPT OF A CLAIM, THE EXCHANGE WILL VERIFY THAT: (i) A VALID ORDER WAS ACCEPTED INTO THE EXCHANGE'S SYSTEMS; AND (ii) AN EXCHANGE SYSTEM FAILURE OR A NEGLIGENT ACT OR OMISSION OF AN EXCHANGE EMPLOYEE OCCURRED DURING THE EXECUTION OR HANDLING OF THAT ORDER.

(e) NOTWITHSTANDING PARAGRAPH (a) ABOVE, AND SUBJECT TO THE EXPRESS LIMITATIONS SET FORTH BELOW, THE EXCHANGE MAY COMPENSATE MEMBERS FOR LOSSES RELATED TO ORDERS OF MEMBERS ROUTED BY THE EXCHANGE THROUGH DE ROUTE TO A TRADING CENTER AND RESULTING DIRECTLY FROM THE MALFUNCTION OF THE PHYSICAL EQUIPMENT, DEVICES AND/OR PROGRAMMING, OR THE NEGLIGENT ACTS OR OMISSIONS OF THE EMPLOYEES, OF SUCH TRADING CENTER.

- (1) ALL CLAIMS FOR COMPENSATION PURSUANT TO THIS RULE SHALL BE IN WRITING. ONCE IN RECEIPT OF A CLAIM, THE EXCHANGE WILL VERIFY THAT: (i) A VALID ORDER FROM THE MEMBER WAS ACCEPTED AND ACKNOWLEDGED BY THE EXCHANGE; (ii) THE MEMBER'S ORDER, OR A PORTION THEREOF, WAS ROUTED BY THE EXCHANGE VIA DE ROUTE TO THE TRADING CENTER; AND (iii) THE MEMBER CLAIMS A LOSS AS A RESULT OF THE MALFUNCTION OF THE PHYSICAL EQUIPMENT, DEVICES AND/OR PROGRAMMING, OR THE NEGLIGENT ACTS OR OMISSIONS OF THE EMPLOYEES, OF SUCH TRADING CENTER. UPON VERIFICATION OF THE FOREGOING, THE EXCHANGE SHALL

FORWARD THE CLAIM VIA DE ROUTE TO SUCH TRADING CENTER AS SOON AS REASONABLY PRACTICABLE.

- (2) IF AND TO THE EXTENT THAT THE EXCHANGE, VIA DE ROUTE, RECEIVES COMPENSATION, IN WHOLE OR IN PART, FROM A TRADING CENTER AS A RESULT OF A CLAIM SUBMITTED ON BEHALF OF A MEMBER, THE EXCHANGE SHALL PASS THE FULL AMOUNT OF SUCH COMPENSATION DIRECTLY TO THE MEMBER. ANY COMPENSATION TO MEMBERS FOR SUCH CLAIMS WILL BE PAID SOLELY FROM COMPENSATION, IF ANY, RECOVERED BY THE EXCHANGE VIA DE ROUTE FROM THE TRADING CENTER.
- (3) IN THE EVENT THAT ALL OF THE CLAIMS MADE UNDER THIS SUBPARAGRAPH (e) AND DIRECTLY ATTRIBUTABLE TO THE SAME MALFUNCTION OR NEGLIGENT ACT OR OMISSION ARE NOT FULLY SATISFIED BY THE TRADING CENTER, THEN ANY AMOUNT OF COMPENSATION RECEIVED FROM THE TRADING CENTER WILL BE PROPORTIONALLY ALLOCATED AMONG ALL SUCH CLAIMS BASED ON THE PROPORTION THAT EACH SUCH CLAIM BEARS TO THE SUM OF ALL SUCH CLAIMS.
- (4) THE PASS-THROUGH OF ANY COMPENSATION TO A MEMBER IN ACCORDANCE WITH THIS SUBPARAGRAPH (e) IS UNRELATED TO ANY OTHER CLAIMS FOR COMPENSATION THAT ARE MADE IN ACCORDANCE WITH, AND SUBJECT TO THE LIMITS OF, SUBPARAGRAPH (d)(3) OF THIS RULE 11.12. ACCORDINGLY, ANY SUCH COMPENSATION MADE PURSUANT TO THIS PARAGRAPH (e) SHALL NOT REDUCE OR OTHERWISE AFFECT THE EXCHANGE'S \$500,000 MONTHLY LIABILITY LIMIT PURSUANT TO SUBPARAGRAPH (d)(3), OR ANY OTHER APPLICABLE INSURANCE MAINTAINED BY THE EXCHANGE.
- (5) THE EXCHANGE SHALL NOT BE LIABLE IN THE EVENT THAT THE TRADING CENTER IDENTIFIED IN A CLAIM FOR COMPENSATION MADE PURSUANT TO THIS PARAGRAPH (e) WERE TO DENY SUCH CLAIM, IN WHOLE OR IN PART, FOR ANY REASON. UNDER NO CIRCUMSTANCES WILL THE EXCHANGES' INABILITY TO PROCURE COMPENSATION FROM A TRADING CENTER, IN WHOLE OR IN PART, AND FOR WHATEVER REASON, GIVE RISE TO A CLAIM FOR COMPENSATION FROM THE EXCHANGE PURSUANT TO PARAGRAPH (d) OF THIS RULE AS A NEGLIGENT ACT OR OMISSION OF AN EXCHANGE EMPLOYEE.

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