

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="42"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2014"/> - * <input type="text" value="008"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by EDGX Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	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 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

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

EDGX Exchange, Inc. proposes to amend Rule 12.6, Customer Priority.

**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="03/21/2014"/>	<input type="text" value="Regulatory Counsel"/>
By <input type="text" value="Christopher Solgan"/>	<input type="text"/>
(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 \***

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

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> EDGX Exchange, Inc. (“EDGX” or the “Exchange”) proposes to amend Rule 12.6, Customer Priority, to make it substantially similar to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5320, BATS Exchange, Inc. (“BATS”) Rule 12.6 and BATS-Y Exchange, Inc. (“BYX”) Rule 12.6.

The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office and at the Public Reference Room of the Securities and Exchange Commission (the “Commission”). 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.<sup>3</sup>

(b) Not applicable.

(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 February 11, 2014. 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.

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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> 17 CFR 240.19b-4(f)(6)(iii).

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

Eric Swanson  
Executive Vice President and  
General Counsel  
EDGX Exchange, Inc.  
(913) 815-7000

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 12.6, which limits trading ahead of customer orders by Members,<sup>4</sup> to make the rule substantially similar to FINRA Rule 5320,<sup>5</sup> BATS Rule 12.6 and BYX Rule 12.6.<sup>6</sup>

On January 31, 2014, Direct Edge Holdings LLC (“DE Holdings”), the former parent company of the Exchange, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX.<sup>7</sup> As part of its effort to reduce

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<sup>4</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>5</sup> See Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR-FINRA-2009-090).

<sup>6</sup> See Securities Exchange Act Release No. 70952 (November 27, 2013), 78 FR 72949 (December 4, 2013) (SR-BATS-2013-056) (order approving proposal to amend BATS Rule 12.6); see also Securities Exchange Act Release No. 70951 (November 27, 2013), 78 FR 72944 (December 4, 2013) (SR-BYX-2013-036) (order approving proposal to amend Rule 12.6).

<sup>7</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43). Upon completion of the Combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding

regulatory duplication and relieve firms that are members of the Exchange, BATS, and BYX of conflicting or unnecessary regulatory burdens, the Exchange is now engaged in the process of reviewing and amending certain Exchange, BATS, and BYX Rules.

In addition, pursuant to Rule 17d-2 under the Act,<sup>8</sup> 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.<sup>9</sup> 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 to comparable FINRA rules for purposes of the 17d-2 Agreement, as well as BATS and BYX rules for purposes of its harmonization efforts due to its business

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company, formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.”

<sup>8</sup> 17 CFR 240.17d-2.

<sup>9</sup> See Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10-196).

combination, the Exchange proposes to amend Rule 12.6, Customer Priority, to align with FINRA Rule 5320, BATS Rule 12.6, and BYX Rule 12.6.

As with FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6, amended Rule 12.6 would prohibit Members from trading ahead of customer orders, subject to specified exceptions. The amended rule would include exceptions for large orders and institutional accounts, proprietary transactions effected by a trading unit of a Member with no knowledge of customer orders held by another trading unit of the Member, riskless principal transactions, intermarket sweep orders (“ISOs”), and odd lot and bona fide error transactions, discussed in detail below. Amended Rule 12.6 would also provide the same guidance as FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6, on minimum price improvement standards, order handling procedures, and trading outside normal market hours.

#### Background

Current Rule 12.6, the customer order protection rule, generally prohibits Members from trading on a proprietary basis ahead of, or along with, customer orders that are executable at the same price as the proprietary order. The rule contains several exceptions that make it permissible for a Member to enter a proprietary order while representing a customer order that could be executed at the same price, including permitting transactions for the purposes of facilitating the execution, on a riskless principal basis, of one or more customer orders.

#### Proposal to Adopt Text of FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6

To harmonize its rules with FINRA, BATS, and BYX, the Exchange proposes to delete the current text of Rule 12.6 and its supplementary material and adopt the text and

supplementary material of FINRA Rule 5320, with certain technical changes, as Rule 12.6. The proposed text of proposed Rule 12.6 would be identical to the text of BATS Rule 12.6 and BYX Rule 12.6. FINRA Rule 5320, BATS Rule 12.6, and BYX Rule 12.6 generally provide that a member that accepts and holds an order in an equity security from its own customer, or a customer of another broker-dealer, without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

#### Exceptions

Amended Rule 12.6 would include exceptions to the prohibition against trading ahead of customer orders. That is, a Member that meets the conditions of an exception would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances. The exceptions are set out below.

#### Large Orders and Institutional Accounts

One exception would permit a Member to negotiate terms and conditions with respect to the acceptance of certain large-sized orders (orders of 10,000 shares or more unless such orders are less than \$100,000 in value) or orders from institutional accounts. The term “institutional account” will be defined in accordance with FINRA Rule 4512(c) and Interpretation and Policy .01 under both BATS and BYX Rules 12.6. That is, an institutional account will be defined as the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment

adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million. This exception would require the Member to provide clear and comprehensive written disclosure to each customer at account opening and annually thereafter that: (a) states that the Member may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the Rule 12.6 protections with respect to all or any portion of its order. If a customer does not opt in to the protections with respect to all or any portion of its order, the Member may reasonably conclude that such customer has consented to the Member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.<sup>10</sup>

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit Members to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis. The Member would be required to document who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. If a customer opted in to the Rule 12.6 protections, a Member could still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the Member documented who provided such consent and that

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<sup>10</sup> A customer would retain the right to withdraw consent at any time. Therefore, a Member's reasonable conclusion that a customer has consented to the Member trading along with such customer's order is subject to further instruction and modification from the customer.

such consent evidenced the customer's understanding of the terms and conditions of the order.

#### No-Knowledge Exception

The Exchange is also proposing to include in Interpretation and Policy .02 a "no-knowledge" exception to its customer order protection rule. The proposed exception would allow one trading unit of a Member to trade in a proprietary capacity and at prices that would satisfy customer orders held by another, separate trading unit of the Member. The No-Knowledge Exception would be applicable with respect to NMS stocks, as defined in Rule 600 of Regulation NMS under the Act.

To avail itself of the No-Knowledge Exception, a Member would be required to meet certain conditions. First, it would have to implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders held by a separate trading unit. As proposed, Interpretation and Policy .02 will make clear that appropriate information barriers must, at a minimum, comply with the Exchange's existing requirements regarding the prevention of the misuse of material, non-public information, which are set forth in Exchange Rule 5.5. Second, the Member would have to provide, at account opening and annually thereafter, a written description of how it handles customer orders and the circumstances under which it may trade proprietarily, including in a market-making capacity, at prices that would satisfy the customer order. A Member must maintain records indicating which orders rely on the no-knowledge exception and produce these records to the Exchange upon request. The onus will be on the Member to produce sufficient documentation justifying reliance on the No-

Knowledge exception for any given trade. To ensure clarity and transparency regarding this exception and others, the Exchange will be issuing a regulatory notice informing Members of these proposed rule changes. The Exchange will include in the regulatory notice the effective date for the rule as amended, which shall be at least 30 days after the effectiveness of the amendments to Rule 12.6 in order to allow Members to make any necessary changes to their internal policies or processes.

#### Riskless Principal Exception

Amended Rule 12.6 would not apply to a proprietary trade made by the Member to facilitate the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer). To take advantage of this exception, the Member would have to: (a) submit a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange, and (b) have written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum, these policies and procedures would have to require: (1) receipt of the customer order before execution of the offsetting principal transaction, and (2) execution of the offsetting principal transaction at the same price as the customer order, exclusive of any markup or markdown, commission equivalent, or other fee and allocation to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Members would have to have supervisory systems in place that produce records that enable the Member and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which the Member relies in claiming this exception.

### ISO Exception

The proposed rule change would also exempt a Member from the obligation to execute a customer order in a manner consistent with Rule 12.6 with regard to trading for its own account when the Member routed an ISO in compliance with Rule 600(b)(30)(ii) of Regulation NMS if the customer order is received after the Member routed the ISO. If a Member routes an ISO to facilitate a customer order, and that customer has consented to not receiving the better prices obtained by the ISO, the Member would also be exempt with respect to any trading for its own account that is the result of the ISO as it pertains to the consenting customer's order.

### Odd Lot and Bona Fide Error Exception

The Exchange proposes to except a Member's proprietary trade that: (1) to offset a customer order that is an amount less than a normal unit of trading (i.e., an order less than one round lot, which is typically 100 shares), or (2) corrects a bona fide error. With respect to bona fide errors, the Member would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this proposed Rule, the Exchange will adopt the definition of "bona fide error" found in Regulation NMS's exemption for error correction transactions.<sup>11</sup> Thus, a bona fide error is:

(i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized

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<sup>11</sup> Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926, 32927 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

or unintended purchase sale or allocation of securities or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.<sup>12</sup>

#### Minimum Price Improvement Standards

The proposed rule change establishes the minimum amount of price improvement necessary for a Member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

In addition, if the minimum price improvement standards set forth in proposed Interpretation and Policy .06, paragraphs (a) through (g) would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under these minimum price improvement standards.

#### Order Handling Procedures

The proposed rule change provides that a Member must make every effort to execute a marketable customer order that it receives fully and promptly. A Member holding a marketable customer order that has not been immediately executed would have to make every effort to cross such order with any other order received by the Member on the other side of the market, up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Member and that is consistent with the terms of the orders. If a Member were

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<sup>12</sup>

Id.

holding multiple orders on both sides of the market that have not been executed, the Member would have to make every effort to cross or otherwise execute such orders in a manner reasonable and consistent with the objectives of the proposed Rule and with the terms of the orders. A Member could satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

#### Trading Outside Normal Market Hours

Under the proposed amendments to Rule 12.6, a Member generally could limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. However, if the customer and Member agreed to the processing of the customer's order outside normal market hours, the protections of amended Rule 12.6 would apply to that customer's order at all times the customer order is executable by the Member.

#### (b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that amending the rule to conform to FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6 will contribute to investor protection by defining

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

important parameters by which Members must abide when trading proprietarily while holding customer limit and market orders, and foster cooperation by harmonizing requirements across self-regulatory organizations. The Exchange also believes that including this rule will reinforce the importance of and ensure that Members are aware of these requirements.

Members who are also members of FINRA, BATS, or BYX are subject to different regulatory standards when seeking to comply with applicable rules regarding customer protection. The Exchange believes that the proposed rule change will provide greater harmonization between similar Exchange and FINRA, BATS, and BYX rules, resulting in greater uniformity and, less burdensome and more efficient regulatory compliance for common members. 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 will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal enhances cooperation among markets and other trading venues to promote fair and orderly markets and to protect the interests of the public and of investors. Specifically, by aligning the Exchange's customer protection rules with those of FINRA, BATS, BYX and other

exchanges,<sup>15</sup> the proposed rule change will reduce the complexity of the customer order protection rules for those Members that are also subject to the customer order protection rules of FINRA and other exchanges. As a result, the proposed rule will help assure the protection of customer orders without imposing undue regulatory costs on industry participants. In addition, 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 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)

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<sup>15</sup> See, e.g., Securities Exchange Act Release No. 64418 (May 6, 2011), 76 FR 27735 (May 12, 2011) (SR-CHX-2011-08) (notice of filing and immediate effectiveness of proposed rule change of Chicago Stock Exchange, Inc. to adopt customer order protection language consistent with FINRA Rule 5320); Securities Exchange Act Release No. 65165 (August 18, 2011), 76 FR 53009 (August 24, 2011) (SR-NYSEAmex-2011-59) (notice of filing and immediate effectiveness of proposed rule change of NYSE Amex LLC (now known as NYSE MKT LLC) to adopt customer order protection language that is substantially the same as FINRA Rule 5320); and Securities Exchange Act Release No. 65166 (August 18, 2011), 76 FR 53012 (August 24, 2011) (SR-NYSEArca-2011-57) (notice of filing and immediate effectiveness of proposed rule change of NYSE Arca, Inc. to adopt customer order protection language that is substantially the same as FINRA Rule 5320).

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

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>19</sup> 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, FINRA, BATS, and BYX rules, resulting in greater uniformity and less burdensome and more efficient regulatory compliance for common members. Additionally, the proposed rule change does not raise

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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).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

any new policy issues not previously considered by the Commission<sup>20</sup> nor impose any significant burden on competition because it would result in less burdensome and more efficient regulatory compliance for common members. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>21</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>22</sup>

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 12.6, Customer Priority, are based on and identical to BATS Rule 12.6 and BATS-Y Rule 12.6.<sup>23</sup>

The proposed rule change is also based on FINRA Rule 5320. The Exchange notes that the proposed rule change is nearly identical to FINRA Rule 5320 with three

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<sup>20</sup> See Securities Exchange Act Release No. 70952 (November 27, 2013), 78 FR 72949 (December 4, 2013) (SR-BATS-2013-056) (order approving proposal to amend BATS Rule 12.6); see also Securities Exchange Act Release No. 70951 (November 27, 2013), 78 FR 72944 (December 4, 2013) (SR-BYX-2013-036) (order approving proposal to amend Rule 12.6).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> See Securities Exchange Act Release No. 70952 (November 27, 2013), 78 FR 72949 (December 4, 2013) (SR-BATS-2013-056) (order approving proposal to amend BATS Rule 12.6); see also Securities Exchange Act Release No. 70951 (November 27, 2013), 78 FR 72944 (December 4, 2013) (SR-BYX-2013-036) (order approving proposal to amend Rule 12.6).

primary exceptions, as described below. Each of the below distinctions are similar to those contained in BATS Rule 12.6 and BYX Rule 12.6.<sup>24</sup>

First, the Exchange omitted from its proposal all language contained in FINRA Rule 5320 specifically directed to OTC equity securities because such language is not applicable to trading on the Exchange. Second, the proposed rule change differs from FINRA Rule 5320 with respect to proposed Interpretation and Policy .02, which makes clear that the “No-Knowledge Exception” applies to proprietary and/or market making desks rather than just market making desks. This particular distinction is based on CBOE Rule 53.2, which applies the No-Knowledge Exception to proprietary and/or market making desks. Finally, Members must maintain records indicating which orders rely on the No-Knowledge Exception and submit these records to the Exchange upon request, rather than marking information regarding such reliance on their orders. This distinction is also based on CBOE Rule 53.2, and reflects the fact that the Exchange does not require Members to submit records of orders and executions through any reporting structure analogous to FINRA’s Order Audit Trail System (“OATS”). The Exchange proposes the distinctions described above based on differences between the overall structure of Exchange rules as opposed to FINRA rules.

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Id.

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.

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- \_\_\_\_\_ ; File No. SR-EDGX-2014-008)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 12.6 to Conform to FINRA Rule 5320, BATS Rule 12.6 and BATS-Y Rule 12.6 Relating to Trading Ahead of Customer Orders

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 \_\_\_\_\_, 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 is filing with the Commission a proposal to amend Rule 12.6, Customer Priority, to make it substantially similar to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5320, BATS Exchange, Inc. (“BATS”) Rule 12.6 and BATS-Y Exchange, Inc. (“BYX”) Rule 12.6. 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.

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

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

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

The Exchange proposes to amend Rule 12.6, which limits trading ahead of customer orders by Members,<sup>3</sup> to make the rule substantially similar to FINRA Rule 5320,<sup>4</sup> BATS Rule 12.6 and BYX Rule 12.6.<sup>5</sup>

On January 31, 2014, Direct Edge Holdings LLC ("DE Holdings"), the former parent company of the Exchange, completed its business combination with BATS Global

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<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> See Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR-FINRA-2009-090).

<sup>5</sup> See Securities Exchange Act Release No. 70952 (November 27, 2013), 78 FR 72949 (December 4, 2013) (SR-BATS-2013-056) (order approving proposal to amend BATS Rule 12.6); see also Securities Exchange Act Release No. 70951 (November 27, 2013), 78 FR 72944 (December 4, 2013) (SR-BYX-2013-036) (order approving proposal to amend Rule 12.6).

Markets, Inc., the parent company of BATS and BYX.<sup>6</sup> As part of its effort to reduce regulatory duplication and relieve firms that are members of the Exchange, BATS, and BYX of conflicting or unnecessary regulatory burdens, the Exchange is now engaged in the process of reviewing and amending certain Exchange, BATS, and BYX Rules.

In addition, pursuant to Rule 17d-2 under the Act,<sup>7</sup> 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.<sup>8</sup> The 17d-2 Agreement included a certification by the Exchange

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<sup>6</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43). Upon completion of the Combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.”

<sup>7</sup> 17 CFR 240.17d-2.

<sup>8</sup> See Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10-196).

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 to comparable FINRA rules for purposes of the 17d-2 Agreement, as well as BATS and BYX rules for purposes of its harmonization efforts due to its business combination, the Exchange proposes to amend Rule 12.6, Customer Priority, to align with FINRA Rule 5320, BATS Rule 12.6, and BYX Rule 12.6.

As with FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6, amended Rule 12.6 would prohibit Members from trading ahead of customer orders, subject to specified exceptions. The amended rule would include exceptions for large orders and institutional accounts, proprietary transactions effected by a trading unit of a Member with no knowledge of customer orders held by another trading unit of the Member, riskless principal transactions, intermarket sweep orders (“ISOs”), and odd lot and bona fide error transactions, discussed in detail below. Amended Rule 12.6 would also provide the same guidance as FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6, on minimum price improvement standards, order handling procedures, and trading outside normal market hours.

#### Background

Current Rule 12.6, the customer order protection rule, generally prohibits Members from trading on a proprietary basis ahead of, or along with, customer orders that are executable at the same price as the proprietary order. The rule contains several exceptions that make it permissible for a Member to enter a proprietary order while representing a customer order that could be executed at the same price, including

permitting transactions for the purposes of facilitating the execution, on a riskless principal basis, of one or more customer orders.

Proposal to Adopt Text of FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6

To harmonize its rules with FINRA, BATS, and BYX, the Exchange proposes to delete the current text of Rule 12.6 and its supplementary material and adopt the text and supplementary material of FINRA Rule 5320, with certain technical changes, as Rule 12.6. The proposed text of proposed Rule 12.6 would be identical to the text of BATS Rule 12.6 and BYX Rule 12.6. FINRA Rule 5320, BATS Rule 12.6, and BYX Rule 12.6 generally provide that a member that accepts and holds an order in an equity security from its own customer, or a customer of another broker-dealer, without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

Exceptions

Amended Rule 12.6 would include exceptions to the prohibition against trading ahead of customer orders. That is, a Member that meets the conditions of an exception would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances. The exceptions are set out below.

Large Orders and Institutional Accounts

One exception would permit a Member to negotiate terms and conditions with respect to the acceptance of certain large-sized orders (orders of 10,000 shares or more

unless such orders are less than \$100,000 in value) or orders from institutional accounts. The term “institutional account” will be defined in accordance with FINRA Rule 4512(c) and Interpretation and Policy .01 under both BATS and BYX Rules 12.6. That is, an institutional account will be defined as the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million. This exception would require the Member to provide clear and comprehensive written disclosure to each customer at account opening and annually thereafter that: (a) states that the Member may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the Rule 12.6 protections with respect to all or any portion of its order. If a customer does not opt in to the protections with respect to all or any portion of its order, the Member may reasonably conclude that such customer has consented to the Member trading a security on the same side of the market for its own account at a price that would satisfy the customer’s order.<sup>9</sup>

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit Members to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-

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<sup>9</sup> A customer would retain the right to withdraw consent at any time. Therefore, a Member’s reasonable conclusion that a customer has consented to the Member trading along with such customer’s order is subject to further instruction and modification from the customer.

order basis. The Member would be required to document who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. If a customer opted in to the Rule 12.6 protections, a Member could still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the Member documented who provided such consent and that such consent evidenced the customer's understanding of the terms and conditions of the order.

#### No-Knowledge Exception

The Exchange is also proposing to include in Interpretation and Policy .02 a "no-knowledge" exception to its customer order protection rule. The proposed exception would allow one trading unit of a Member to trade in a proprietary capacity and at prices that would satisfy customer orders held by another, separate trading unit of the Member. The No-Knowledge Exception would be applicable with respect to NMS stocks, as defined in Rule 600 of Regulation NMS under the Act.

To avail itself of the No-Knowledge Exception, a Member would be required to meet certain conditions. First, it would have to implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders held by a separate trading unit. As proposed, Interpretation and Policy .02 will make clear that appropriate information barriers must, at a minimum, comply with the Exchange's existing requirements regarding the prevention of the misuse of material, non-public information, which are set forth in Exchange Rule 5.5. Second, the Member would have to provide, at account opening and annually thereafter, a written description of how it

handles customer orders and the circumstances under which it may trade proprietarily, including in a market-making capacity, at prices that would satisfy the customer order. A Member must maintain records indicating which orders rely on the no-knowledge exception and produce these records to the Exchange upon request. The onus will be on the Member to produce sufficient documentation justifying reliance on the No-Knowledge exception for any given trade. To ensure clarity and transparency regarding this exception and others, the Exchange will be issuing a regulatory notice informing Members of these proposed rule changes. The Exchange will include in the regulatory notice the effective date for the rule as amended, which shall be at least 30 days after the effectiveness of the amendments to Rule 12.6 in order to allow Members to make any necessary changes to their internal policies or processes.

#### Riskless Principal Exception

Amended Rule 12.6 would not apply to a proprietary trade made by the Member to facilitate the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer). To take advantage of this exception, the Member would have to: (a) submit a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange, and (b) have written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum, these policies and procedures would have to require: (1) receipt of the customer order before execution of the offsetting principal transaction, and (2) execution of the offsetting principal transaction at the same price as the customer order, exclusive of any markup or markdown, commission equivalent, or other fee and allocation to a

riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Members would have to have supervisory systems in place that produce records that enable the Member and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which the Member relies in claiming this exception.

#### ISO Exception

The proposed rule change would also exempt a Member from the obligation to execute a customer order in a manner consistent with Rule 12.6 with regard to trading for its own account when the Member routed an ISO in compliance with Rule 600(b)(30)(ii) of Regulation NMS if the customer order is received after the Member routed the ISO. If a Member routes an ISO to facilitate a customer order, and that customer has consented to not receiving the better prices obtained by the ISO, the Member would also be exempt with respect to any trading for its own account that is the result of the ISO as it pertains to the consenting customer's order.

#### Odd Lot and Bona Fide Error Exception

The Exchange proposes to except a Member's proprietary trade that: (1) to offset a customer order that is an amount less than a normal unit of trading (i.e., an order less than one round lot, which is typically 100 shares), or (2) corrects a bona fide error. With respect to bona fide errors, the Member would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this proposed Rule, the Exchange will adopt the definition of "bona fide error" found in

Regulation NMS's exemption for error correction transactions.<sup>10</sup> Thus, a bona fide error is:

(i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase sale or allocation of securities or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.<sup>11</sup>

#### Minimum Price Improvement Standards

The proposed rule change establishes the minimum amount of price improvement necessary for a Member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

In addition, if the minimum price improvement standards set forth in proposed Interpretation and Policy .06, paragraphs (a) through (g) would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under these minimum price improvement standards.

#### Order Handling Procedures

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<sup>10</sup> Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926, 32927 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

<sup>11</sup> Id.

The proposed rule change provides that a Member must make every effort to execute a marketable customer order that it receives fully and promptly. A Member holding a marketable customer order that has not been immediately executed would have to make every effort to cross such order with any other order received by the Member on the other side of the market, up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Member and that is consistent with the terms of the orders. If a Member were holding multiple orders on both sides of the market that have not been executed, the Member would have to make every effort to cross or otherwise execute such orders in a manner reasonable and consistent with the objectives of the proposed Rule and with the terms of the orders. A Member could satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

#### Trading Outside Normal Market Hours

Under the proposed amendments to Rule 12.6, a Member generally could limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. However, if the customer and Member agreed to the processing of the customer's order outside normal market hours, the protections of amended Rule 12.6 would apply to that customer's order at all times the customer order is executable by the Member.

#### Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that amending the rule to conform to FINRA Rule 5320, BATS Rule 12.6 and BYX Rule 12.6 will contribute to investor protection by defining important parameters by which Members must abide when trading proprietarily while holding customer limit and market orders, and foster cooperation by harmonizing requirements across self-regulatory organizations. The Exchange also believes that including this rule will reinforce the importance of and ensure that Members are aware of these requirements.

Members who are also members of FINRA, BATS, or BYX are subject to different regulatory standards when seeking to comply with applicable rules regarding customer protection. The Exchange believes that the proposed rule change will provide greater harmonization between similar Exchange and FINRA, BATS, and BYX rules, resulting in greater uniformity and, less burdensome and more efficient regulatory compliance for common members. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal enhances cooperation among markets and other trading venues to promote fair and orderly markets and to protect the interests of the public and of investors. Specifically, by aligning the Exchange's customer protection rules with those of FINRA, BATS, BYX and other exchanges,<sup>14</sup> the proposed rule change will reduce the complexity of the customer order protection rules for those Members that are also subject to the customer order protection rules of FINRA and other exchanges. As a result, the proposed rule will help assure the protection of customer orders without imposing undue regulatory costs on industry participants. In addition, 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

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<sup>14</sup> See, e.g., Securities Exchange Act Release No. 64418 (May 6, 2011), 76 FR 27735 (May 12, 2011) (SR-CHX-2011-08) (notice of filing and immediate effectiveness of proposed rule change of Chicago Stock Exchange, Inc. to adopt customer order protection language consistent with FINRA Rule 5320); Securities Exchange Act Release No. 65165 (August 18, 2011), 76 FR 53009 (August 24, 2011) (SR-NYSEAmex-2011-59) (notice of filing and immediate effectiveness of proposed rule change of NYSE Amex LLC (now known as NYSE MKT LLC) to adopt customer order protection language that is substantially the same as FINRA Rule 5320); and Securities Exchange Act Release No. 65166 (August 18, 2011), 76 FR 53012 (August 24, 2011) (SR-NYSEArca-2011-57) (notice of filing and immediate effectiveness of proposed rule change of NYSE Arca, Inc. to adopt customer order protection language that is substantially the same as FINRA Rule 5320).

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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 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-4<sup>18</sup> 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, FINRA, BATS, and BYX rules, resulting in greater uniformity and less burdensome and more efficient regulatory compliance for common members. Additionally, the proposed rule change does not raise any new policy issues not previously considered by the Commission<sup>19</sup> nor impose any significant burden on competition because it would result in less burdensome and more efficient regulatory compliance for common members. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>20</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>21</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

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<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> See Securities Exchange Act Release No. 70952 (November 27, 2013), 78 FR 72949 (December 4, 2013) (SR-BATS-2013-056) (order approving proposal to amend BATS Rule 12.6); see also Securities Exchange Act Release No. 70951 (November 27, 2013), 78 FR 72944 (December 4, 2013) (SR-BYX-2013-036) (order approving proposal to amend Rule 12.6).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

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-2014-008 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-2014-008. 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-2014-008 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>22</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

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

## CHAPTER XII. TRADING PRACTICE RULES

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Rule 12.6. [Customer Priority] Prohibition Against Trading Ahead of Customer Orders

(a) [No Member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.] Except as provided herein, a Member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) [No Member shall (i) buy or initiate the purchase of any such security for any account in which it or any associated person of the member is directly or indirectly interested at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limit order to buy such security in the unit of trading for a customer or (ii) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limit order to sell such security in the unit of trading for a customer.] A Member must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule. A Member also must ensure that this methodology is consistently applied.

[(c) The provisions of paragraphs (a) and (b) of this Rule shall not apply: (i) to any purchase or sale of any such security in an amount less than the unit of trading made by a member to offset odd-lot orders for customers; (ii) to any purchase or sale of any such security upon terms for delivery other than those specified in such unexecuted market or limit order; or (iii) to any unexecuted order that is subject to a condition that has not been satisfied.

(d) The provisions of paragraphs (a) and (b) of this Rule also shall not apply if a Member engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the “facilitated order”). This exemption applies to both offsetting transaction legs of a riskless principal transaction but only to the extent of the actual number of shares that are required to satisfy the facilitated order. A “riskless principal transaction” is defined as two offsetting

principal transaction legs in which a Member, (i) after having received an order to buy a security that it holds for execution on the Exchange, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security that it holds for execution on the Exchange, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.]

#### Interpretations and Policies

.01 [A Member or any associated person of a Member responsible for entering orders for its own account or any account in which it is directly or indirectly interested shall be presumed to have knowledge of a particular unexecuted customer order. Such presumption can be rebutted by adequate evidence which shows, to the Exchange's satisfaction, that the Member has implemented a reasonable system of internal policies and procedures and has an adequate system of internal controls to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.] Large Orders and Institutional Account Exceptions. With respect to orders for customer accounts that meet the definition of an "institutional account" or for orders of 10,000 shares or more (unless such orders are less than \$100,000 in value), a Member is permitted to trade a security on the same side of the market for its own account at a price that would satisfy such customer order, provided that the Member has provided clear and comprehensive written disclosure to such customer at account opening and annually thereafter that:

(a) discloses that the Member may trade proprietarily at prices that would satisfy the customer order, and

(b) provides the customer with a meaningful opportunity to opt in to the Rule 12.6 protections with respect to all or any portion of its order.

If the customer does not opt in to the Rule 12.6 protections with respect to all or any portion of its order, the Member may reasonably conclude that such customer has consented to the Member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.

In lieu of providing written disclosure to customers at account opening and annually thereafter, a Member may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the Member documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions of the order.

For purposes of this Rule, "institutional account" shall mean the account of:

(1) a bank, savings and loan association, insurance company or registered investment company;

(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or

(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

.02 [A Member shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the Member, for his own account, trades with an incoming market or marketable limit order at a price which is less than one penny better than the price of such customer limit order (not the quoted price) held by such Member.] No Knowledge Exception.

(a) With respect to NMS stocks (as defined in Rule 600 of Regulation NMS), if a Member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, those other trading units trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit. A Member that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the Member and the circumstances under which the Member may trade proprietarily at its proprietary and/or market-making desk at prices that would satisfy the customer order.

(b) If a Member implements and utilizes appropriate information barriers in reliance on this exception, the Member must uniquely identify such information barriers in place at the department within the Member where the order was received or originated. Appropriate information barriers must, at minimum, comply with the requirements set forth in Rule 5.5.

(c) Members must maintain records that indicate which orders rely on the No-Knowledge Exception and submit these records to the Exchange upon request.

.03 [A Member shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) at a price outside the NBBO, the Member, for his own account, trades with an incoming market or marketable limit order at a price which is less than the nearest penny increment to the actual price of the customer limit order (not the quoted price) held by such Member.] Riskless Principal Exception. The obligations under this Rule shall not apply to a Member's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of an order from a customer (whether its own customer or the customer of another broker-dealer) (the "facilitated order"), provided that the Member:

(a) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange (or another self-regulatory organization if not required under Exchange rules); and

(b) has written policies and procedures to ensure that riskless principal transactions for which the Member is relying upon this exception comply with applicable Exchange rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

A Member must have supervisory systems in place that produce records that enable the Member and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all facilitated orders for which the Member relies on this exception.

.04 ISO Exception. A Member shall be exempt from the obligation to execute a customer order in a manner consistent with this Rule with regard to trading for its own account that is the result of an intermarket sweep order (“ISO”) routed in compliance with Rule 600(b)(30)(ii) of Regulation NMS where the customer order is received after the Member routed the ISO. Where a Member routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the Member also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer’s order.

.05 Odd Lot and Bona Fide Error Transaction Exceptions. The obligations under this Rule shall not apply to a Member’s proprietary trade that is: (1) to offset a customer order that is an amount less than a normal unit of trading; or (2) to correct a bona fide error. Members are required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

For purposes of this Rule, a bona fide error is:

(a) the inaccurate conveyance or execution of any term of an order, including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of the market;

(b) the unauthorized or unintended purchase, sale, or allocation of securities or the failure to follow specific client instructions;

(c) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

(d) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

.06 Minimum Price Improvement Standards. The minimum amount of price improvement necessary for a Member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order is as follows:

(a) For customer limit orders priced greater than or equal to \$1.00, the minimum amount of price improvement required is \$0.01 for NMS stocks;

(b) For customer limit orders priced greater than or equal to \$0.01 and less than \$1.00, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread;

(c) For customer limit orders priced less than \$0.01 but greater than or equal to \$0.001, the minimum amount of price improvement required is the lesser of \$0.001 or one-half (1/2) of the current inside spread;

(d) For customer limit orders priced less than \$0.001 but greater than or equal to \$0.0001, the minimum amount of price improvement required is the lesser of \$0.0001 or one-half (1/2) of the current inside spread;

(e) For customer limit orders priced less than \$0.0001 but greater than or equal to \$0.00001, the minimum amount of price improvement required is the lesser of \$0.00001 or one-half (1/2) of the current inside spread;

(f) For customer limit orders priced less than \$0.00001, the minimum amount of price improvement required is the lesser of \$0.000001 or one-half (1/2) of the current inside spread; and

(g) For customer limit orders priced outside the best inside market, the minimum amount of price improvement required must either meet the requirements set forth above or the Member must trade at a price at or inside the best inside market for the security.

In addition, if the minimum price improvement standards above would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under the minimum price improvement standards above.

.07 Order Handling Procedures. A Member must make every effort to execute a marketable customer order that it receives fully and promptly. A Member that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the Member on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Member and that is consistent with the terms of the orders. In the event that a Member is holding multiple orders on both sides of the market that have not been executed, the Member must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of this Rule and with the

terms of the orders. A Member can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

.08 Trading Outside Normal Market Hours. Members generally may limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. However, if the customer and Member agree to the processing of the customer's order outside normal market hours, the protections of this Rule shall apply to that customer's order at all times the customer order is executable by the Member.

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