

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="13"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by EDGX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

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

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

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

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

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

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="04/05/2013"/>	General Counsel
By <input type="text" value="Jeffrey S. Rosenstock"/>	<input type="text"/>
(Name *)	<input type="text" value="jrosenstock@directedge.com"/>

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

- (a) EDGX Exchange, Inc. (“EDGX” or the “Exchange”), proposes to amend Footnote 4 of the Exchange’s fee schedule regarding Retail Orders. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at www.directedge.com, at the Exchange’s principal office and at the Public Reference Room of the Securities and Exchange Commission (the “Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct or significant indirect effect on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on April 27, 2010. Exchange staff will advise the EDGX Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change. Therefore, the Exchange's internal procedures with respect to the proposed change are complete.

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

Thomas N. McManus
Chief Regulatory Officer
EDGX Exchange, Inc.
201-418-3471

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

(a) Purpose

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

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

² As defined in Exchange Rule 1.5(n).

on an order-by-order basis. In SR-EDGX-2012-48,³ the Exchange subsequently expanded Members' ability to send the Exchange Retail Orders by designating certain of their FIX ports at the Exchange as "Retail Order Ports." The attestation requirement, as described in SR-EDGX-2012-47,⁴ will continue to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports.

Proposed Amendment to Definition of "Retail Order"

Footnote 4 on the Exchange's fee schedule currently defines a Retail Order as: "(i) an agency order that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology."⁵ The Exchange believes that its definition of a "Retail Order" is unnecessarily restrictive compared to that of other exchanges in that the Exchange does not include "riskless principal orders" in its definition.⁶ The Exchange believes that its comparatively narrow definition may create confusion among the Exchange's Members, preventing Members from submitting Retail Orders and benefiting from the enhanced rebate and transparency of such orders. In addition, the Exchange believes that the restrictiveness of the Exchange's definition may inadvertently put the Exchange at a competitive disadvantage in relation to other exchanges that provide a less restrictive definition of a "Retail Order."

Accordingly, the Exchange proposes to amend the definition of a "Retail Order" in Footnote 4 to add riskless principal orders to the types of orders that may qualify as Retail Orders.⁷ The Exchange proposes to amend Footnote 4 to state "[w]here a Retail Order is defined as (i) an agency order or riskless principal order that satisfies the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the

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

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

⁵ See EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

⁶ The Exchange notes that other market centers include "riskless principal orders" as part of their definitions of "Retail Orders." See, e.g., Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR-NYSE-2013-20); Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR-NYSEMKT-2013-22).

⁷ The Exchange notes that in order to qualify as a "Retail Order," a "riskless principal" order must satisfy the criteria set forth in FINRA Rule 5320.03.

order does not originate from a trading algorithm or any other computerized methodology.” (emphasis added).⁸

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a Member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no “risk” in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in the System⁹ by a Member on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: the customer receives an execution while the involved Member acts as an intermediary to effect the transaction.¹⁰

The Exchange believes that the requirement that the entry of such riskless principal orders satisfy FINRA Rule 5320.03 provides sufficient protection against Members submitting orders for their own account to the Exchange. A Member entering a riskless principal transaction will have to, contemporaneously with the execution of the customer’s order, submit a report identifying the trade as riskless principal to FINRA. Additionally, the Member will need to have written policies and procedures to ensure that riskless principal transactions comply with applicable FINRA rules. The policies and procedures, at a minimum, must require that the customer order be 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. Additionally, the Member must have supervisory systems in place that produce records that enable the Member and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all Retail Orders that are entered on a riskless principal basis.

The Exchange believes that the Member must also ensure that non-Retail Orders from customers are not included with the Retail Orders as part of a riskless principal transaction. The above requirements ensure that despite the procedural differences between the execution of a riskless principal transaction and an agency order, the only difference will be the procedure in which the transactions are effected and not the result.

⁸ The Exchange notes that it will amend its attestation form for Members designating Retail Orders to conform with these new requirements.

⁹ As defined in Exchange Rule 1.5(cc).

¹⁰ A principal transaction differs from both a riskless principal transaction and an agency order in that it is an order for the principal account of the entering Member.

The Exchange further believes that clarifying that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are able to be submitted as Retail Orders on the same basis as agency orders will enable Members, and in turn, their retail customers, to benefit from the enhanced rebate (Flag ZA) and transparency offered by the Exchange.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that riskless principal orders that meet the requirements of FINRA Rule 5320.03 will have the same opportunity to be submitted as Retail Orders as agency orders. As discussed above, there is no functional distinction for purposes of Retail Orders between an order entered by a Member on an agency basis and one entered on a riskless principal basis. The Exchange believes that the proposed change would tend to reduce any potential discrimination between similarly situated customers or brokers by ensuring that the ability of retail customers to benefit from the use of Retail Orders does not depend on a distinction in capacity that is not meaningful for purposes of submitting Retail Orders. As a result of the change, a retail customer would be able to benefit from the rebate (Flag ZA) for utilizing Retail Orders without regards to whether the Member enters the order on a riskless principal or agency basis.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will clarify that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are eligible to be submitted as Retail Orders on the same basis as agency orders. By allowing all orders that are functionally equivalent to agency orders to be submitted as Retail Orders, the proposed change would potentially stimulate further competition for retail order flow.

The Exchange believes that the proposed change would protect investors and the public interest by expanding the access of Members to the rebate for Flag ZA and the transparency offered by the Exchange as well as the access of the public to an exchange sponsored alternative to broker-operated internalization venues. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

(rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed amendment to allow Members to submit Retail Orders on a riskless principal basis will not burden intramarket competition because the ability to submit Retail Orders on a riskless principal basis would be open to all Members that wish to send Retail Orders to the Exchange.

The Exchange believes that the proposed amendment, by increasing the eligible orders that qualify as Retail Orders, would reduce burdens on competition around retail executions such that Members would receive better rebates than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of designating Retail Orders on an exchange market would result in better rebates for Members, and ultimately benefit retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹³ of the Act and Rule 19b-4(f)(6)¹⁴ 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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 believes that this proposal is non-controversial in that it is similar to rule changes undertaken by other exchanges and does not present any unique policy issues that have not been previously considered by the Commission.¹⁵ The Exchange believes that Members should reap the benefits of these proposed amendments immediately, as it believes transparency would be enhanced and use of Retail Orders increased.

The Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest because the rule proposal is intended to clarify that an Member may submit Retail Orders to the Exchange in a riskless principal capacity as well as in an agency capacity, provided that the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03. This clarification will, as previously stated, stimulate Members to send more Retail Order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁶

The Exchange further respectfully requests that the Commission waive the five (5) day pre-filing requirement and the thirty (30) day delayed operative date so that this proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁷ of the Act and Rule 19b-4(f)(6) thereunder.¹⁸ Waiver of the five (5) day pre-filing requirement and the thirty (30) day delayed operative date will allow Members to send Retail Orders that are riskless principal orders and to do so immediately without further delay. Accordingly, the Exchange believes that this rule change should not be delayed as it will allow the Exchange to remain competitive with other market centers by providing an additional choice to its Members as to where they send Retail Orders on a riskless principal basis.

¹⁵ See Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR-NYSE-2013-20) Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR-NYSEMKT-2013-22).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

Based on the foregoing, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the five (5) day pre-filing requirement and the thirty (30) day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁹ Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

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

The Exchange notes that the addition of riskless principal orders to its definition of Retail Orders would render the Exchange's definition substantially similar to those definitions utilized by the NASDAQ Stock Market LLC, the New York Stock Exchange LLC and NYSE MKT LLC.²⁰

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.

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ See, e.g., Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR-NYSE-2013-20); Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR-NYSEMKT-2013-22).

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EDGX-2013-13)

[Date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 5, 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 Footnote 4 of the Exchange's fee schedule regarding Retail Orders. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet website at www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

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

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

⁴ As defined in Exchange Rule 1.5(n).

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

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

Proposed Amendment to Definition of “Retail Order”

Footnote 4 on the Exchange’s fee schedule currently defines a Retail Order as:

“(i) an agency order that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.”⁷

The Exchange believes that its definition of a “Retail Order” is unnecessarily restrictive compared to that of other exchanges in that the Exchange does not include “riskless principal orders” in its definition.⁸ The Exchange believes that its comparatively narrow definition may create confusion among the Exchange’s Members, preventing Members from submitting Retail Orders and benefiting from the enhanced rebate and transparency of such orders. In addition, the Exchange believes that the restrictiveness of the Exchange’s definition may inadvertently put the Exchange at a competitive disadvantage in relation to other exchanges that provide a less restrictive definition of a “Retail Order.”

Accordingly, the Exchange proposes to amend the definition of a “Retail Order” in Footnote 4 to add riskless principal orders to the types of orders that may qualify as Retail Orders.⁹ The Exchange proposes to amend Footnote 4 to state “[w]here a Retail

⁷ See EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

⁸ The Exchange notes that other market centers include “riskless principal orders” as part of their definitions of “Retail Orders.” See, e.g., Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR-NYSE-2013-20); Securities Exchange Act Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR-NYSEMKT-2013-22).

⁹ The Exchange notes that in order to qualify as a “Retail Order,” a “riskless principal” order must satisfy the criteria set forth in FINRA Rule 5320.03.

Order is defined as (i) an agency order or riskless principal order that satisfies the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.” (emphasis added).¹⁰

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a Member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no “risk” in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in the System¹¹ by a Member on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: the customer receives an execution while the involved Member acts as an intermediary to effect the transaction.¹²

¹⁰ The Exchange notes that it will amend its attestation form for Members designating Retail Orders to conform with these new requirements.

¹¹ As defined in Exchange Rule 1.5(cc).

¹² A principal transaction differs from both a riskless principal transaction and an agency order in that it is an order for the principal account of the entering Member.

The Exchange believes that the requirement that the entry of such riskless principal orders satisfy FINRA Rule 5320.03 provides sufficient protection against Members submitting orders for their own account to the Exchange. A Member entering a riskless principal transaction will have to, contemporaneously with the execution of the customer's order, submit a report identifying the trade as riskless principal to FINRA. Additionally, the Member will need to have written policies and procedures to ensure that riskless principal transactions comply with applicable FINRA rules. The policies and procedures, at a minimum, must require that the customer order be 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. Additionally, the Member must have supervisory systems in place that produce records that enable the Member and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all Retail Orders that are entered on a riskless principal basis.

The Exchange believes that the Member must also ensure that non-Retail Orders from customers are not included with the Retail Orders as part of a riskless principal transaction. The above requirements ensure that despite the procedural differences between the execution of a riskless principal transaction and an agency order, the only difference will be the procedure in which the transactions are effected and not the result.

The Exchange further believes that clarifying that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are able to be submitted as Retail Orders on the same basis as agency orders will enable Members, and in turn, their retail

customers, to benefit from the enhanced rebate (Flag ZA) and transparency offered by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that riskless principal orders that meet the requirements of FINRA Rule 5320.03 will have the same opportunity to be submitted as Retail Orders as agency orders. As discussed above, there is no functional distinction for purposes of Retail Orders between an order entered by a Member on an agency basis and one entered on a riskless principal basis. The Exchange believes that the proposed change would tend to reduce any potential discrimination between similarly situated customers or brokers by ensuring that the ability of retail customers to benefit from the use of Retail Orders does not depend on a distinction in capacity that is not meaningful for purposes of submitting Retail Orders. As a result of the change, a retail customer would be able to benefit from the rebate (Flag ZA) for utilizing Retail Orders without regards to whether the Member enters the order on a riskless principal or agency basis.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will clarify that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are eligible to be submitted as Retail Orders on the same basis as agency orders. By allowing all orders that are functionally equivalent to agency orders to be submitted as Retail Orders, the proposed change would potentially stimulate further competition for retail order flow.

The Exchange believes that the proposed change would protect investors and the public interest by expanding the access of Members to the rebate for Flag ZA and the transparency offered by the Exchange as well as the access of the public to an exchange sponsored alternative to broker-operated internalization venues. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed amendment to allow Members to submit Retail Orders on a riskless principal basis will not burden intramarket competition

because the ability to submit Retail Orders on a riskless principal basis would be open to all Members that wish to send Retail Orders to the Exchange.

The Exchange believes that the proposed amendment, by increasing the eligible orders that qualify as Retail Orders, would reduce burdens on competition around retail executions such that Members would receive better rebates than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of designating Retail Orders on an exchange market would result in better rebates for Members, and ultimately benefit retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁵ of the Act and Rule 19b-4(f)(6)¹⁶ thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

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 believes that this proposal is non-controversial in that it is similar to rule changes undertaken by other exchanges and does not present any unique policy issues that have not been previously considered by the Commission.¹⁷ The Exchange believes that Members should reap the benefits of these proposed amendments immediately, as it believes transparency would be enhanced and use of Retail Orders increased.

The Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest because the rule proposal is intended to clarify that an Member may submit Retail Orders to the Exchange in a riskless principal capacity as well as in an agency capacity, provided that the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03. This clarification will, as previously stated, stimulate Members to send more Retail Order flow to the Exchange and thereby allow more Members to achieve an enhanced rebate for such flow.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁸

The Exchange further respectfully requests that the Commission waive the five (5) day pre-filing requirement and the thirty (30) day delayed operative date so that this

¹⁷ See Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR-NYSE-2013-20) Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR-NYSEMKT-2013-22).

¹⁸ 17 CFR 240.19b-4(f)(6).

proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁹ of the Act and Rule 19b-4(f)(6) thereunder.²⁰ Waiver of the five (5) day pre-filing requirement and the thirty (30) day delayed operative date will allow Members to send Retail Orders that are riskless principal orders and to do so immediately without further delay. Accordingly, the Exchange believes that this rule change should not be delayed as it will allow the Exchange to remain competitive with other market centers by providing an additional choice to its Members as to where they send Retail Orders on a riskless principal basis.

Based on the foregoing, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the five (5) day pre-filing requirement and the thirty (30) day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.²¹ Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

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

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:

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2013-13 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-EDGX-2013-13. 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-2013-13 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underlined

Deletions [bracketed]

EDGX Exchange Fee Schedule – Effective April [1] 5, 2013

* * * * *

¹⁻³ (No changes).

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

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