

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62256; File No. SR-EDGX-2010-02)

June 10, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by EDGX Exchange, Inc. Relating to Direct Edge, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 3, 2010, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

EDGX proposes to make changes to its corporate structure to provide that it will be a wholly-owned subsidiary of Direct Edge, Inc. (“DEI”) instead of Direct Edge Holdings, LLC (“DE Holdings”).

The proposed Certificate of Incorporation of DEI (“DEI Certificate”) is attached as Exhibit 5A, the proposed Bylaws of DEI (“DEI Bylaws”) are attached as Exhibit 5B, and the Amended and Restated Bylaws of EDGX (“EDGX Bylaws”) are attached as Exhibit 5C.

The text of the proposed rule change is available on the Exchange’s Web site www.directedge.com, on the Commission’s Internet Web site at <http://www.sec.gov>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 Exchange 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 Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On March 12, 2010, the Commission granted the Form 1 exchange registration applications of EDGX and its affiliate exchange, EDGA Exchange, Inc. ("EDGA").³

As provided in the Form 1 application, EDGX and Direct Edge ECN, LLC d/b/a DE Route ("DE Route"), the Exchange's routing broker/dealer, are wholly-owned subsidiaries of DE Holdings.⁴ EDGX Bylaws identify this ownership structure.⁵ Any changes to the EDGX Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.⁶ As part of a general corporate reorganization, EDGX is now proposing to create a new corporation, DEI, which will be owned by DE Holdings. DEI will, in turn, own the Exchange and be both an operating and

³ See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File Nos. 10-194 and 10-196) (the "Order").

⁴ DE Holdings is a limited liability company overseen by a board of managers. Ownership in DE Holdings is represented by limited liability membership interests. EDGA is also a wholly-owned subsidiary of DE Holdings.

⁵ EDGA Bylaws, Article I., Section kk.

⁶ See 15 U.S.C. 78s. See also Order at note 77 and accompanying text.

holding company. All of the equity of EDGX is proposed to be transferred to DEI. In turn, DE Holdings will be the sole stockholder of DEI and thus, DEI will be a wholly-owned subsidiary of DE Holdings. The self-regulatory functions of EDGX will, however, continue to remain with EDGX. As stated above, DE Route will continue to be owned directly by DE Holdings.

In connection with this corporate reorganization, the Exchange is filing these documents with the Commission as part of Exhibit 5: (i) the proposed DEI Certificate is attached as Exhibit 5A; (ii) the proposed DEI Bylaws are attached as Exhibit 5B; and (iii) the EDGX Bylaws are attached as Exhibit 5C.

As the primary focus of this rule filing is to focus on those provisions that are directly related to the Exchange's ability to perform its regulatory responsibilities following the transaction described above, the Exchange's discussion will focus on the relevant provisions of the documents mentioned above.

Preservation of Self-Regulatory Function of EDGX

Section 7.7 of the DE Holdings' Fourth Amended and Restated Limited Liability Company Operating Agreement (the "DE Holdings LLC Agreement") identifies certain corporate actions that require the approval of DE Holdings' Board of Managers and the members of DE Holdings. The Sixth Article of the DEI Certificate provides that any action requiring the approval of the DE Holdings Board of Managers and/or members of DE Holdings pursuant to Section 7.7 of the DE Holdings LLC Agreement shall require the approval of the stockholders of DEI (DE Holdings is the sole stockholder of DEI). The Sixth Article of the DEI Certificate further provides that, notwithstanding such approval, nothing contained in Section 7.7 of the DE Holdings LLC Agreement shall be applicable where the application of such provision or provisions would interfere with the effectuation of any decisions by the Board of Directors of

DEI (“Board”) relating to regulatory functions of the Exchange (including disciplinary matters) or the structure of the market that the Exchange regulates, or would interfere with the ability of the Exchange to carry out its responsibilities under the Act or to oversee the structure of the market that the Exchange regulates.⁷ This Sixth Article of the DEI Certificate further provides that these responsibilities shall include the ability of the Exchange as an SRO:

- to prevent fraudulent and manipulative acts and practices;
- to promote just and equitable principles of trade;
- to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and
- to protect investors and the public interest.⁸

In addition, the DEI Bylaws provide that, for so long as DEI controls the Exchange, the Board, officers, employees and agents of DEI must give due regard to the preservation of independence of the self-regulatory function of the Exchange and must not interfere with its regulatory functions (including disciplinary matters) or the ability of the Exchange to carry out its responsibilities under the Act.⁹

These provisions, as well as the associated notice and rule filing requirements with respect to any person or entity that may acquire an interest in DEI (as described below), will serve to protect the integrity of the Exchange’s self-regulatory responsibilities and the SEC’s

⁷ See DEI Certificate, Article VI., Section 2.

⁸ Id.

⁹ See DEI Bylaws, Article VII, Section 7.1.

oversight responsibilities. These provisions will also ensure that, although DEI will not itself carry out any regulatory functions, its activities with respect to the Exchange will be consistent with, and not interfere with the self-regulatory obligations of the Exchange.

Ownership Limitations and Changes in Ownership

The DE Holdings LLC Agreement includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.¹⁰ The DE Holdings LLC Agreement states that no person may own, directly or indirectly, of record or beneficially, units of interest in the ownership of DE Holdings (“Units”) representing more than a 40% interest in DE Holdings.¹¹ In addition, the DE Holdings LLC Agreement prohibits members of EDGX or EDGA (“Exchange Members”), either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a percentage interest in DE Holdings of more than 20%.¹² Furthermore, no person, other than International Securities Exchange Holdings, Inc., either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% interest in DE Holdings.¹³ If any member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, then DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.¹⁴ In addition, DE Holdings will

¹⁰ See the Order at 13156.

¹¹ See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(1).

¹² See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(2).

¹³ See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(3).

¹⁴ See DE Holdings LLC Agreement, Article XII., Section 12.3.

not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.¹⁵

These voting and ownership restrictions in the DE Holdings LLC Agreement are unaffected by the proposed change in corporate structure whereby DEI will become an operating and holding company for the Exchange. Further, such restrictions will effectively be carried over into the new corporate structure because the DEI Certificate provides that the sole stockholder of DEI will be DE Holdings¹⁶ and as discussed below, the EDGX Bylaws indicate that DEI will be the sole owner of EDGA.¹⁷ In addition, for so long as DEI indirectly or directly controls EDGA, any amendment to the ownership requirements in the DEI Certificate, including the provision identifying DE Holdings as the sole stockholder of DEI, shall be submitted to the Board of Directors of EDGX for a determination as to whether such amendment must be filed with, or filed with and approved by, the SEC before such amendment can become effective and in such event, such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.¹⁸

The Exchange proposes to amend its bylaws to require that the sole stockholder of the Exchange will be DEI.¹⁹ Any changes to the EDGX Bylaws, including any change in the provision that identifies DEI as the sole owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.²⁰ This ownership requirement, together with the DE Holdings' and DEI's voting and ownership restrictions described above, is designed to

¹⁵ See DE Holdings LLC Agreement, Article XII., Section 12.4.

¹⁶ See DEI Certificate, Article VIII., Section 4.

¹⁷ See EDGX Bylaws, Article I., Section kk.

¹⁸ See DEI Certificate, Article VIII, Section 3.

¹⁹ See EDGX Bylaws, Article I., Section kk.

²⁰ See 15 U.S.C. 78s. See also Order at note 77 and accompanying text.

prevent any Exchange Member or other person from exercising undue control over the operation of the Exchange through DEI and further assures that the Exchange and the Commission will be able to carry out their respective regulatory obligations under the Act. The Exchange believes that these requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their respective regulatory oversight responsibilities under the Act.

Jurisdiction and Regulatory Oversight

The DEI Certificate and DEI Bylaws will contain several provisions designed to protect the independence of the self-regulatory function of the Exchange.

DEI's officers and directors are deemed to be the officers and directors of the Exchange.²¹ Article VII of the DEI Bylaws further states that DEI's Board and its officers, employees, and agents shall give due regard to the preservation of independence of the self-regulatory function of the Exchange and shall not interfere with the effectuation of any decisions by the Exchange's Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act.²² In addition, the DEI Bylaws further provide that DEI shall comply with the U.S. federal securities laws and rules and regulations thereunder and shall cooperate with the SEC and the Exchange.²³ The DEI Bylaws also provide that DEI's officers, directors, employees and agents shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions

²¹ See DEI Bylaws, Article V., Section 5.8(b).

²² See DEI Bylaws, Article VII., Section 7.1.

²³ See DEI Bylaws, Article VII., Section 7.2.

and responsibilities of the Exchange. In addition, DEI shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.²⁴

Furthermore, DEI and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the Exchange for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of the Exchange.²⁵ In addition, those same parties shall be deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding any claims that they are not personally subject to the jurisdiction of the United States federal courts, the SEC, and the Exchange that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.²⁶

These provisions ensure that, should an occasion arise that requires regulatory cooperation or jurisdictional submission from DEI, such cooperation will be forthcoming and uncontested.

Books and Records

The Bylaws of DEI contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DEI. According to the DEI Bylaws, the books and records of DEI are deemed to be the books and records of the Exchange to the extent they are related to the operation or administration of the Exchange.²⁷ In addition, for as long as DEI

²⁴ Id.

²⁵ See DEI Bylaws, Article VII., Section 7.3.

²⁶ Id.

²⁷ See DEI Bylaws, Article V., Section 5.8(b).

controls the Exchange, DEI's books and records shall be subject at all times to inspection and copying by the SEC and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.²⁸

The DEI Bylaws also provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that shall come into the possession of DEI shall:

- be retained in confidence by DEI, its stockholders, officers, directors, employees and agents; and
- not be used for any non-regulatory purposes.²⁹

The foregoing, however, shall not limit or impede the rights of the SEC or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any DEI stockholders, officers, directors, employees or agents to disclose such confidential information to the SEC or the Exchange.³⁰ DEI's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) any Exchange, provided that such books and records are related to the operation or administration of the Exchange.³¹ In addition, DEI's books and records shall be maintained within the United States.³²

²⁸ Id.

²⁹ See DEI Bylaws, Article V., Section 5.8(a).

³⁰ Id.

³¹ See DEI Bylaws, Article V., Section 5.8(b).

³² See DEI Bylaws, Article VII., Section 7.5.

Voting the Equity of EDGX

Currently, the DE Holdings LLC Agreement provides that DE Holdings shall, in its capacity as the sole stockholder of EDGX, cause all outstanding equity of EDGX owned by DE Holdings and entitled to vote with respect to an election to be voted in accordance with the EDGA Bylaws.³³ Inasmuch as DE Holdings will no longer be a stockholder of EDGX upon the consummation of this transaction, such requirements will no longer be applicable to DE Holdings.

As DEI will now be the sole stockholder of EDGX, DEI shall cause all outstanding equity of EDGX owned by DEI and entitled to vote with respect to an election to be voted in accordance with the EDGX Bylaws.³⁴ Under Section 2.15(b) of the DEI Bylaws, with respect to any election of directors, other than “Owner Directors,”³⁵ or members of the Nominating Committee or Exchange Member Nominating Committee of the Exchange, DEI shall cause all outstanding equity of the Exchange owned by DEI and entitled to vote to elect: (i) only those nominees for the Nominating Committee and for the Exchange Member Nominating Committee that are nominated in accordance with the EDGX Bylaws; and (ii) only those directors nominated by the Nominating Committee of the Exchange. Under Section 2.15(c) of the DEI Bylaws, with respect to “Owner Directors,” DEI shall take all actions in its capacity as a stockholder of the Exchange to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant member of DE Holdings that is entitled to nominate such Owner Director.

³³ See DE Holdings LLC Agreement, Article VII., Section 7.3(b).

³⁴ See DEI Bylaws, Article II., Section 2.15(b).

³⁵ “Owner Director” is defined in Article I., Section (z) of the EDGA Bylaws as a Director nominated by a member of DE Holdings that holds at least a 15% percentage interest in DE Holdings and that is elected by the stockholders of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³⁶ in general, and with Sections 6(b)(1) and (b)(5) of the Act,³⁷ in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

³⁶ 15 U.S.C. 78f.

³⁷ 15 U.S.C. 78f(b)(3), [sic] (5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2010-02 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-2010-02. 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal office of EDGA. 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-2010-02 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.³⁸

Florence E. Harmon
Deputy Secretary

³⁸ 17 CFR 200.30-3(a)(12).