

Independent Trustee Requirement generally prevents applicant from serving as trustee for the Issuer. Applicant states that the Independent Trustee Requirement imposes an unnecessary regulatory limitation on trustee selection and causes market distortions by leading to the selection of trustees for reasons other than customary market considerations of pricing and expertise. This result is disadvantageous to the ABS market and to ABS investors.

5. Applicant submits that due to the nature and timing of the roles of the trustee and the underwriter, applicant's affiliation with an underwriter would not result in a conflict of interest or possibility of overreaching that could harm investors. Applicant states that the trustee's role begins with the Issuer's issuance of its securities, and the trustee performs its role over the life of the Issuer. Applicant states that, in contrast, the underwriter is chosen early in the ABS Transaction process, may help to structure the ABS Transaction, distributes the Issuer's securities to investors, and generally has no role subsequent to the distribution of the Issuer's securities. Applicant further states that an ABS trustee does not monitor the distribution of securities or any other activity performed by underwriters and there is no opportunity for a trustee and an affiliated underwriter to act in concert to benefit themselves at the expense of holders of the ABS either prior to or after the closing of the ABS Transaction.

6. Applicant states that the trustee's role is narrowly defined, and that the trustee is neither expected nor required to exercise discretion or judgment except after a default in the ABS transaction, which rarely occurs. Applicant states that the duties of a trustee after a default are limited to enforcing the terms of the Agreement for the benefit of debt holders as a "prudent person" would enforce such interests for his own benefit. Applicant further states that the trustee of the Issuer has virtually no discretion to pursue anyone in any regard other than preserving and realizing on the assets. In any event, Applicant states that any role taken by the Trustee in the event of a default would occur after the underwriter has terminated its role in the transaction.

7. Applicant submits that the concerns underlying the Independent Trustee Requirement are not implicated if the trustee for an Issuer is independent of the sponsor, servicer, and credit enhancer for the Issuer, but is affiliated with an underwriter for the Issuer, because in that situation no single entity would act in all capacities

in the issuance of the ABS and the operation of an Issuer. Applicant states that applicant would continue to act as an independent party safeguarding the assets of any Issuer regardless of an affiliation with an underwriter of the ABS. Applicant submits that the concern that affiliation could lead to a trustee monitoring the activities of an affiliate also is not implicated by a trustee's affiliation with an underwriter, because, in practice, a trustee for an Issuer does not monitor the distribution of securities or any other activity performed by underwriters. Applicant further states that the requested relief would be consistent with the broader purpose of Rule 3a-7 of not hampering the growth and development of the ABS market, to the extent consistent with investor protection.

8. Applicant states that the conditions set forth below provide additional protections against conflicts and overreaching. For example, the conditions ensure that the Applicant will continue to act as an independent party safeguarding the assets of an Issuer regardless of an affiliation with the underwriter of the ABS and would not allow the underwriter any greater access to the assets, or cash flows derived from the assets, of the Issuer than if there were no affiliation.

*Applicant's Conditions:*

The applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The applicant will not be affiliated with any person involved in the organization or operation of the Issuer in an ABS Transaction other than the underwriter.

2. The applicant's relationship to an affiliated underwriter will be disclosed in writing to all parties involved in an ABS Transaction, including the rating agencies and the ABS holders.

3. An underwriter affiliated with the applicant will not be involved in the operation of an Issuer, and its involvement in the organization of an Issuer will extend only to determining the assets to be pooled, assisting in establishing the terms of the ABS to be underwritten, and/or providing the sponsor with a line of credit for the assets to be transferred to the Issuer in connection with, and prior to, the related securitization.

4. An affiliated person of the applicant, including an affiliated underwriter, will not provide credit or credit enhancement to an Issuer if the applicant serves as trustee to the Issuer.

5. An underwriter affiliated with the applicant will not engage in any remarketing agent activities, including involvement in any auction process in

which ABS interest rates, yields, or dividends are reset at designated intervals in any ABS Transaction for which the applicant serves as trustee to the Issuer.

6. All of an affiliated underwriter's contractual obligations pursuant to the underwriting agreement will be enforceable by the sponsor, the Issuer and/or one of their affiliates.

7. Consistent with the requirements of Rule 3a-7(a)(4)(i), the applicant will resign as trustee for the Issuer if applicant becomes obligated to enforce any of an affiliated underwriter's obligations to the Issuer.

8. The applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76302 ; File No. SR-EDGX-2015-52]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.8, Order Display and Book Processing

October 29, 2015.

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 October 28, 2015, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

## **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to authorize the Exchange's equity options platform ("EDGX Options") to make a modification to Rule 21.8 (Order Display and Book Processing).

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

## **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 parts of such statements.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### **1. Purpose**

The Exchange is proposing to modify Rule 21.8, Order Display and Book Processing, which sets forth the priority rules applicable to EDGX Options. Specifically, Rule 21.8 describes the general priority rules for EDGX Options, including that quotes and orders are prioritized by price and then on a pro-rata basis according to size. Rule 21.8 also describes additional priority overlays, including special priority provisions for Customer orders, Directed Market Makers and Primary Market Makers. The purpose of this rule filing is to make a minor modification to the Directed Market Maker and Primary Market Maker priority overlays, as described below.

The Directed Market Maker overlay provides the Directed Market Maker with priority over other participants for a certain percentage of contracts allocated at the same price (60% or 40% depending upon the number of other Market Maker quotes at the NBBO). Similarly, the Primary Market Maker overlay provides Primary Market Makers with priority over other participants for a certain percentage of contracts allocated at the same price (60% or 40% depending upon the

number of other Market Maker quotes at the NBBO) and for small size orders. The Exchange proposes to modify both of these priority overlays so that the percentage allocation (60% or 40%) is dependent on the number of Market Maker quotations or other non-Customer orders at the NBBO rather than simply the number of other Market Maker quotations at the NBBO. The Exchange believes that the amended rule would appropriately recognize that other professional market participants, not just Market Makers, may compete on the Exchange. Further, the rule as amended would be consistent with the priority rules of both the International Securities Exchange LLC ("ISE")<sup>5</sup> and NASDAQ OMX PHLX LLC ("PHLX").<sup>6</sup> The Exchange believes that the proposed change will have a positive competitive impact on quoting by reducing the likelihood of a Primary Market Maker or Directed Market Maker will receive the higher 60% allocation by increasing the types of other participants and, in turn, the number of orders from participants, that are considered when allocating executions. In other words, because other non-Customer orders will be considered, not just the quotes of other Market Makers, such other non-Customers will be better incentivized to provide liquidity at the NBBO.

#### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act<sup>8</sup> because it 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 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 proposed rule change will allow the Exchange to launch the EDGX Options platform with a priority allocation model that allocates a different percentage of contracts to Directed Market Makers and Primary Market Makers, either 60% or 40%, depending on whether there is more than one non-Customer with an order at the NBBO rather than whether there is more than one Market Maker at the NBBO. The Exchange believes that the change is appropriate and consistent with the Act because it recognizes that other professional participants, not just Market Makers, can compete for orders with Directed Market Makers and Primary Market Makers. As noted above, certain other options exchanges operate with a similar priority rule.<sup>9</sup>

### *(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 proposed rule change is not designed to address any competitive issues but rather to make a modification to the Exchange's priority rule prior to the launch of EDGX Options. As noted above, the change would make the Exchange's priority rule similar to that of certain other options exchanges.<sup>10</sup> As noted above, the Exchange believes that the proposed change will have a positive competitive impact on quoting by reducing the likelihood of a Primary Market Maker or Directed Market Maker will receive the higher 60% allocation by increasing the types of other participants and, in turn, the number of orders from participants, that are considered when allocating executions. In other words, because other non-Customer orders will be considered, not just the quotes of other Market Makers, such other non-Customers will be better incentivized to provide liquidity at the NBBO.

### *(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 written comments from members or other interested parties.

<sup>5</sup> See ISE Rule 713(e) and Supplementary Material .01(b) to Rule 713, which count the number of other "Professional Orders" for application of the priority rule. Professional Orders, in turn, are defined in ISE Rule 100(a)(37C) as orders "for the account of a person or entity that is not a Priority Customer," and are thus equivalent to non-Customer orders on the Exchange.

<sup>6</sup> See PHLX Rule 1014(g)(ii), which counts the number of "controlled accounts" for application of the priority rule. Controlled accounts are accounts "controlled by or under common control with a broker-dealer", and thus, apply to a broader range of participants than just market makers or the equivalent.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See *supra* notes 5 and 6.

<sup>10</sup> *Id.*

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

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the commencement of the operations of EDGX Options is scheduled for November 2, 2015, and waiver of the 30-day operative delay would permit the Exchange to launch EDGX Options with the proposed priority allocation model. The Exchange also notes that the proposed rule change is similar to priority rules already in place on other options exchanges and does not raise any new policy issues. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2015-52 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-EDGX-2015-52. This file number should be included on the subject line if email 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 will also 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-2015-52 and should be submitted on or before November 25, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76303; File No. SR-MIAX-2015-61]

### Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 321 Business Continuity and Disaster Recovery Plans Testing Requirements for Designated Members

October 29, 2015.

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> notice is hereby given that on October 21, 2015, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II 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

The Exchange is filing a proposal to adopt Rule 321, Business Continuity and Disaster Recovery Plans Testing Requirements for Designated Members.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX's principal office, and at the Commission's Public Reference Room.

#### 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

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

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

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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