

1. Text of the Proposed Rule Change

(a) EDGX Exchange, Inc. (“Exchange” or “EDGX”) proposes to amend its Rule 3.13 to conform it with FINRA Rule 5230 in order (i) for FINRA to effectively examine for the rule pursuant to a Rule 17d-2 agreement that the Exchange has entered into with FINRA; and (ii) to modernize its terms and clarify its scope. Text of the proposed rule change is attached as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

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

Eric W. Hess  
General Counsel  
EDGX Exchange  
201-942-8239

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

(a) Purpose

EDGX Exchange, Inc. has entered into a Rule 17d-2<sup>1</sup> agreement with FINRA pursuant to which FINRA surveils violations of rules in common between FINRA and EDGX. This agreement covers common members of EDGX and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) examination of common members of EDGX 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

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<sup>1</sup> 17 CFR 240.17d-2.

with the federal securities laws, rules and regulations, and the rules of EDGX that the Exchange has certified as identical or substantially similar to FINRA rules.<sup>2</sup>

EDGX Rule 3.13 is identical to NASD Rule 3330, which was subsequently re-numbered and amended to be FINRA Rule 5230.<sup>3</sup> FINRA, however, recently incorporated additional exceptions to this rule in order to “modernize its terms and clarify its scope.”<sup>4</sup> After a consideration of the merits of such rule change, including the benefits of ensuring that Rule 3.13 would continue to be a common rule covered under the Exchange’s Rule 17d-2 agreement with FINRA, EDGX is proposing to amend its Rule 3.13 to comport it with FINRA Rule 5230.

EDGX Rule 3.13 currently provides that no member may, “directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security . . . .” The rule includes an exception for any matter that is “clearly distinguishable as paid advertising.”

EDGX agrees with FINRA’s reasoning for proposing changes to its Rule 5230. Therefore, EDGX is proposing two changes to EDGX Rule 3.13 to modernize its terms and clarify its scope.<sup>5</sup> First, the proposed rule change updates the list of media to which the rule refers since Rule 3.13 refers only to matters published or circulated in any “newspaper, investment service, or similar publication.” The proposed rule change updates this language to include electronic and other types of media, including magazines, Web sites, and television programs. Second, the proposed rule change expands the exceptions in the rule beyond paid advertising to also include compensation paid in connection with research reports and communications published in reliance on Section 17(b) of the Securities Act of 1933.<sup>6</sup> EDGX is proposing these changes to clarify that the prohibitions in the rule are not intended to cover compensation paid for

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<sup>2</sup> See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10-196).

<sup>3</sup> See Securities and Exchange Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (SR-FINRA-2009-048).

<sup>4</sup> See Securities and Exchange Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (SR-FINRA-2009-048).

<sup>5</sup> The proposed rule changes also changes the title of the rule to “Payments Involving Publications that Influence the Market Price of a Security.”

<sup>6</sup> Section 17(b) of the Securities Act of 1933 provides that no person may “publish, give publicity to, or circulate any . . . communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.” 15 U.S.C. 77q(b).

publications that are explicitly permitted pursuant to other rules. For example, Rule 3.13 could be read to prohibit a member from paying for a third-party research report if the report affected the market price of a security. However, EDGX does not believe that the rule should be read to prohibit compensation paid in connection with the publication of information that is specifically permitted pursuant to Section 17(b) of the Securities Act of 1933, provided the required disclosures are made.

(b) Basis – The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, which requires, among other things, that Exchange rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. EDGX believes that the proposed rule change will clarify the scope of the rule as well as allow FINRA to be able to examine for it under a Rule 17d-2 agreement since it will be identical to FINRA Rule 5230, as proposed to be amended.

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

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

#### 5. 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.

#### 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) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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.

In its guidance on the proposed rules of Self-Regulatory Organizations (“SROs”),<sup>11</sup> the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6). The Commission noted that “a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO’s rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange’s rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”<sup>12</sup> The Exchange notes that the changes proposed herein are virtually identical to changes proposed by FINRA and approved by the Commission.

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

The proposed rule change is virtually identical to the rule change proposed at Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (SR-FINRA-2009-048).

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the *Federal Register*.

Exhibit 5 – Text of the Proposed Rule Change.

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<sup>11</sup> See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

<sup>12</sup> Id. at 40149.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGX-2010-11

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 3.13

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 August 3, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend EDGX Rule 3.13 to conform it with FINRA Rule 5230 in order (i) for FINRA to effectively examine for the rule pursuant to a Rule 17d-2 agreement that the Exchange has entered into with FINRA; and (ii) to modernize its terms and clarify its scope. The text of the proposed rule change is available on the Exchange's Internet website at <http://www.directedge.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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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 Statutory Basis for, the Proposed Rule Change

Purpose - EDGX Exchange, Inc. has entered into a Rule 17d-2<sup>3</sup> agreement with FINRA pursuant to which FINRA surveils violations of rules in common between FINRA and EDGX. This agreement covers common members of EDGX and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) examination of common members of EDGX 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 EDGX that the Exchange has certified as identical or substantially similar to FINRA rules.<sup>4</sup>

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<sup>3</sup> 17 CFR 240.17d-2.

<sup>4</sup> See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151

EDGX Rule 3.13 is identical to NASD Rule 3330, which was subsequently re-numbered and amended to be FINRA Rule 5230.<sup>5</sup> FINRA, however, recently incorporated additional exceptions to this rule in order to “modernize its terms and clarify its scope.”<sup>6</sup> After a consideration of the merits of such rule change, including the benefits of ensuring that Rule 3.13 would continue to be a common rule covered under the Exchange’s Rule 17d-2 agreement with FINRA, EDGX is proposing to amend its Rule 3.13 to comport it with FINRA Rule 5230.

EDGX Rule 3.13 currently provides that no member may, “directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security . . . .” The rule includes an exception for any matter that is “clearly distinguishable as paid advertising.”

EDGX agrees with FINRA’s reasoning for proposing changes to its Rule 5230. Therefore, EDGX is proposing two changes to EDGX Rule 3.13 to modernize its terms and clarify its scope.<sup>7</sup> First, the proposed rule change updates the list of media to which the rule refers since Rule 3.13 refers only to matters published or circulated in any “newspaper, investment service, or similar publication.” The proposed rule change

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(March 18, 2010) (approving File No. 10-196).

<sup>5</sup> See Securities and Exchange Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (SR-FINRA-2009-048).

<sup>6</sup> See Securities and Exchange Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (SR-FINRA-2009-048).

<sup>7</sup> The proposed rule changes also changes the title of the rule to “Payments Involving Publications that Influence the Market Price of a Security.”

updates this language to include electronic and other types of media, including magazines, Web sites, and television programs. Second, the proposed rule change expands the exceptions in the rule beyond paid advertising to also include compensation paid in connection with research reports and communications published in reliance on Section 17(b) of the Securities Act of 1933.<sup>8</sup> EDGX is proposing these changes to clarify that the prohibitions in the rule are not intended to cover compensation paid for publications that are explicitly permitted pursuant to other rules. For example, Rule 3.13 could be read to prohibit a member from paying for a third-party research report if the report affected the market price of a security. However, EDGX does not believe that the rule should be read to prohibit compensation paid in connection with the publication of information that is specifically permitted pursuant to Section 17(b) of the Securities Act of 1933, provided the required disclosures are made.

Basis – The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(5) of the Act,<sup>10</sup> in particular, which requires, among other things, that Exchange rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. EDGX believes that the proposed rule change will clarify the scope of the rule as well as allow

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<sup>8</sup> Section 17(b) of the Securities Act of 1933 provides that no person may “publish, give publicity to, or circulate any . . . communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.” 15 U.S.C. 77q(b).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

FINRA to be able to examine for it under a Rule 17d-2 agreement since it will be identical to FINRA Rule 5230, as proposed to be amended.

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

The proposed rule change 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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

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<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

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

that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2010-11 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-2010-11. 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 inspection and copying in the Commission's Public Reference Room. Copies of such

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-2010-11 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

Underlining indicates additions; [Brackets] indicates deletions.

### Rule 3.13 Payments [Designed to] Involving Publications that Influence the Market

#### Price[s] of a Security[, Other than Paid Advertising]

- (a) Except as provided in paragraph (b), [N]no member shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any [newspaper,] electronic or other public media, including any investment service[,] or similar publication, Web site, newspaper, magazine or other periodical, radio, or television program of any matter that [which] has, or is intended to have, an effect upon the market price of any security.
- (b) The prohibitions in paragraph (a) [, provided that this Rule] shall not [be construed to] apply to [matter which] compensation paid to a person in connection with the publication or circulation of:
- (1) a communication that is clearly distinguishable as paid advertising;
  - (2) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act; or
  - (3) a research report, as that term is defined in NASD Rule 2711.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 2711 are transferred into the FINRA rulebook, then Rule 2711 shall be construed to require Exchange members to

comply with the FINRA rule corresponding to NASD Rule 2711 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.