Many other commenters, however, believed that the events of May 6 demonstrate the need for trading pauses in individual stocks as a means to reduce excessive market volatility. The Commission agrees that the proposed trading pauses are prudent measures that are appropriately being introduced on a pilot basis to address extraordinarily severe and harmful price volatility of the kind that occurred on May 6.

In sum, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA. In particular, the rules and regulations thereunder of the Act and the proposed rule change is consistent with volatility of the kind that occurred on a pilot basis to address extraordinarily severe and harmful price volatility. The Commission agrees that the proposed trading pauses are prudent measures that are appropriately being introduced on a pilot basis to address extraordinarily severe and harmful price volatility.

The Commission believes the proposed rule change, among other things, will establish consistent, market-wide trading pauses as a means to prevent potentially destabilizing price volatility and will thereby help promote the goals of investor protection and fair and orderly markets.

The Commission also finds good cause for approving the proposed pause before the 30th day after the publication of notice thereof in the Federal Register. FINRA has worked quickly and cooperatively with the Exchanges to devise a response to the events of May 6, 2010. The Commission received a number of comments on the proposal, the great majority of which were supportive of the proposed trading pause. The proposed rule change is being implemented on a pilot basis so that the Commission and FINRA can monitor the effects of the pilot on the marketplace and consider adjustments, as necessary. The Commission believes that accelerating approval of this proposal is appropriate as it will enable FINRA nearly immediately to begin coordinating trading pauses with the Exchanges in the event of sudden Index stock changes. In particular, the Commission believes that this proposed rule change should further the goals of investor protection and fair and orderly markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2010–025) be, and hereby is, approved on an accelerated basis.

By the Commission.

Elizabeth M. Murphy
Secretary.

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SECURITIES AND EXCHANGE COMMISSION


June 10, 2010.

I. Introduction

On May 18, 2010, each of BATS Exchange, Inc. (“BATS”), EDGX Exchange, Inc. (“EDGX”), NASDAQ OMX BX, Inc. (“BX”), International Securities Exchange LLC (“ISE”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSEArca”), The NASDAQ Stock Market LLC (“NASDAQ”), National Stock Exchange, Inc. (“NSX”) and Chicago Board Options Exchange, Incorporated (“CBOE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 19b–4 thereunder, proposed rule changes to amend certain of their respective rules, or adopt new rules, to provide for trading pauses in individual stocks when the price moves ten percent or more in the preceding five minute period. On May 19, 2010, EDGA Exchange, Inc. (“EDGA”) and Chicago Stock Exchange, Inc. (“CHX”) filed proposed rule changes to provide for similar trading pauses. The proposed rule changes were published for comment in the Federal Register on May 24, 2010. The Commission received 26 comments on the proposals and on the broader concept of circuit breakers on individual securities. The

4 The term “Exchanges” shall refer collectively to all of the exchanges in this order. The term “Listing Markets” refers collectively to NYSE, NYSEArca and NASDAQ. The term “Non-listing Markets” refers collectively to the remaining nine national securities exchanges. The term SROs refers collectively to the Exchanges and the Financial Industry Regulatory Authority (“FINRA”).
5 See Securities Exchange Act Release Nos. 62121 (May 19, 2010), 75 FR 28834 (May 24, 2010); 62123 (May 19, 2010), 75 FR 28844 (May 24, 2010); 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010); 62125 (May 19, 2010), 75 FR 28836 (May 24, 2010); 62126 (May 19, 2010), 75 FR 28831 (May 24, 2010); 62127 (May 19, 2010), 75 FR 28837 (May 24, 2010); 62128 (May 19, 2010), 75 FR 28830 (May 24, 2010); 62129 (May 19, 2010), 75 FR 28836 (May 24, 2010); 62130 (May 19, 2010), 75 FR 28831 (May 24, 2010); 62131 (May 19, 2010), 75 FR 28845 (May 24, 2010); 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010); 62133 (May 19, 2010), 75 FR 28833 (May 24, 2010); and 62130 (May 19, 2010), 75 FR 28842 (May 24, 2010).
7 The Commission considered letters received prior to May 18 discussing the concept of individual stock circuit breakers as well as formal letters citing the rule filings. See Letter from Senator Charles E. Schumer to Chairman Schapiro, Commission, et. al., dated May 10, 2010; Letter from Congressman Edward J. Markey to Chairman Schapiro, Commission, dated May 11, 2010; Letter from Clifford S. Phillips to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010; Letter from Thomas Hoffer to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010; Letter from Brian Murphy, Secretary, Commission, dated May 13, 2010; Letter from John Meredith to Elizabeth M. Murphy, Secretary, dated May 19, 2010; Letter from Peter Shopt to Elizabeth M. Murphy, Secretary, Commission, dated May 19, 2010; Molinete Letter; Letter from James J. Angel to the Commission, dated May 21, 2010; Letter from T.P. Tursick to Elizabeth M. Murphy, Secretary, Commission, dated May 25, 2010; Letter from Senator Charles E. Schumer to Chairman Schapiro, dated May 21, 2010; and Letter from Senator Edward J. Markey to Chairman Schapiro, dated May 21, 2010.
NYSE responded to the comments in a letter dated June 8, 2010. This order grants accelerated approval to the proposed rule changes.

II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption. Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reverting to prices closer to their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the Exchanges. The Commission is concerned that events such as those that occurred on May 6 can seriously undermine the integrity of the U.S. securities markets. Accordingly, it is working on a variety of fronts to assess the causes and contributing factors of the May 6 market disruption and to fashion policy responses that will help prevent a recurrence.

The Commission also recognizes the importance of moving quickly to implement appropriate steps that could help limit potential harm from extreme price volatility. In this regard, it is pleased that the SROs began consulting soon after May 6 in an effort to develop consistent circuit breaker rules that could be implemented on an expedited basis. The SROs were able to reach agreement on a consistent approach, and, on May 18 and 19, 2010, all of the SROs filed proposed rule changes with the Commission.

These rules would require the Listing Markets to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets would notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once a Listing Market issues a trading pause, the other Exchanges would be required to pause trading in that security on their markets. In order to avoid interfering with existing procedures designed to facilitate orderly openings and closings, the trading pause requirements would apply only from 9:45 a.m. until 3:35 p.m.

At the end of the five-minute pause, the primary Listing Market would reopen trading in the security in accordance with its procedures for doing so. Trading would resume on the other Exchanges and in the over-the-counter market once trading has resumed on the primary Listing Market. In the event of a significant imbalance on the primary Listing Market at the end of a trading pause, the primary Listing Market may delay reopening. If the primary Listing Market has not reopened within ten minutes from the initiation of the trading pause, however, the other Exchanges may resume trading.

The Exchanges have proposed that these rule changes be implemented as a pilot that would end on December 10, 2010. The pilot period would enable the Exchanges and the Commission to assess the effect of the new rules on the marketplace. To initiate this pilot promptly, the proposed rules would be in effect only with respect to securities included in the S&P 500 Index. The Commission understands that the Exchanges expect to file additional rule proposals in the near future to expand the scope of the pilot (for example, to include ETFs) within the pilot period.

The Exchanges have requested that the Commission approve the proposed rule changes on an accelerated basis, so that they may become operative as soon as practicable.

III. Discussion of Comments and Commission Findings

As of June 7, the Commission received 26 comment letters regarding the proposed rule changes, a substantial number of which were generally supportive. For example, an institutional investor stated that “on very rare occasions like May 6 a pause in trading is necessary to give market participants a chance to ‘reset’ and react appropriately to periods of dislocation. A reasonable trading halt will provide investors time to rationally assess the market events and commit liquidity at appropriate price levels.” Another institutional investor strongly supported single stock circuit breakers, noting that “trading pauses may reduce market volatility resulting from temporary supply-demand imbalances without unduly interrupting price discovery.”

The commenters also raised a variety of significant issues regarding the scope and operation of the circuit breakers. These include: (1) Whether the circuit breakers should be expanded beyond S&P 500 stocks, particularly to exchange traded funds (“ETFs”) and the securities of other companies that were most severely affected on May 6; (2) the...
need for revised market-wide circuit breakers;17 and (3) operational issues regarding the circuit breakers, including the times when they should apply,18 the threshold events that should trigger them and the length of the pause,19 the procedures for resuming trading after a pause,20 and alternatives to the circuit breaker mechanism.21

The Commission believes that most if not all of these suggestions regarding potential ways to improve or perfect the circuit breaker, or variations on them, were generally considered by the Exchanges in developing a uniform proposal that could be implemented in a reasonably short period of time and yet provide important benefits to the markets.22 The Commission recognizes that all of these issues warrant continued close consideration in the coming days and months, and it expects that the SROs will continue to consult with each other, the Commission and market participants on both the scope and operation of the circuit breakers.

With respect to the specific proposals under consideration here, however, the Commission has evaluated them based on whether they are consistent with the Act and whether they represent a useful first step that should improve the existing procedures for protecting investors and maintaining fair and orderly markets. It finds that the proposals meet these standards and therefore is approving them on an expedited basis.

The Commission agrees that consideration should be given by the Exchanges to whether the circuit breakers should be expanded to additional securities, but does not believe that there is a reason to delay the implementation of circuit breakers for S&P 500 stocks as a reasonable first step.23 Similarly, it agrees that the existing market-wide circuit breakers should be re-examined in light of current market conditions, but again does not believe that the initial stage of the circuit breaker pilot for individual stocks should be delayed pending that re-examination. With respect to operational issues regarding the circuit breakers, the Commission anticipates that the Exchanges will continue to evaluate these issues during the pilot period, and will propose any modifications to the circuit breakers that may be necessary or appropriate before that period has ended, but does not believe that the first stage of the circuit breaker pilot should be delayed pending such consideration.24

A few commenters expressed concern that the proposed circuit breakers could cause more harm than good. One, for example, suggested that the Exchanges’ timeframe for implementation of the proposed rule changes could be overly aggressive and lead to systems problems.25 The Commission understands that the Exchanges have been working closely with market participants to address implementation issues and facilitate a prompt yet workable roll-out of the circuit breaker pilot.26 No other comments were received indicating events of May 6, other trading venues or broker-dealers would not be able to fully implement the proposed circuit breakers within the timeframes established in the Exchange filings.

Other commenters questioned whether trading halts may exacerbate price volatility, and one stated that a trading halt on May 6 might have increased the order imbalance preventing an intraday recovery.27 Many other commenters, however, believed that the events of May 6 demonstrate the need for trading pauses in individual stocks as a means to reduce excessive market volatility.28 The Commission agrees that the proposed trading pauses are prudent measures that are appropriately being introduced on a pilot basis to address extraordinarily severe and harmful price volatility of the kind that occurred on May 6.

In sum, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder.
applicable to national securities exchanges. In particular, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act,31 which among other things requires that the rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.32

The Commission believes the proposed rule changes, among other things, will establish consistent, market-wide trading pauses as a means to prevent potentially destabilizing price volatility and will thereby help promote the goals of investor protection and fair and orderly markets.

The Commission also finds good cause for approving the proposals before the 30th day after the publication of notice thereof in the Federal Register. The Exchanges have worked quickly and cooperatively to devise a response to the events of May 6, 2010. The Commission received a number of comments on the proposals, the great majority of which were supportive of the proposed trading pause. The proposed changes are being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the marketplace and consider adjustments, as necessary. The Commission believes that accelerating approval of these proposals is appropriate as it will enable the Exchanges nearly immediately to begin coordinating trading pauses across markets in the event of sudden changes in the value of the S&P 500 Index stocks. In particular, the Commission believes that these proposed rule changes should further the goals of investor protection and fair and orderly markets.

IV. Conclusion


By the Commission.

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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

June 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),3 and Rule 19b–4 thereunder, notice is hereby given that on June 3, 2010, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “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

EDGA 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 EDGA (“EDGA Bylaws”) are attached as Exhibit 5C.


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 EDGA and its affiliate exchange, EDGX Exchange, Inc. (“EDGX”).3 As provided in the Form 1 application, EDGA 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 EDGA Bylaws identify this ownership structure.5 Any changes to the EDGA Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of EDGA, must be filed with and approved by the Commission pursuant to Section 19 of the Act.6 As part of a general corporate reorganization, EDGA 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 holding company. All of the equity of EDGA 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 EDGA will, however, continue to remain with EDGA. 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


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. EDGX is also a wholly-owned subsidiary of DE Holdings.

5 EDGA Bylaws, Article I., Section kk.

6 See 15 U.S.C. 76s. See also Order at note 77 and accompanying text.