continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of Nasdaq, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to NES's inbound routing activities in its capacity as a facility of Nasdaq, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NES,[23] combined with FINRA's monitoring of NES's compliance with the Exchange's rules and quarterly reporting to Phlx's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NES.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Phlx–2011–170) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

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combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[23] This oversight will be accomplished through the FINRA RSA between the Exchange and FINRA, and, as applicable, a 17d–2 Agreement. *See* PSX Approval Order, 75 FR at 56638, n.80 and accompanying text.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66176; File No. SR–EDGX–2012–03]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 1.5(q)

January 18, 2012.

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 January 13, 2012, 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 and II 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

EDGX Exchange, Inc. (''EDGX'' or the ''Exchange''), proposes to amend EDGX Rule 1.5(q) to change the starting time of the Pre-Opening Session from 7 a.m. Eastern Time (''ET'') to 8 a.m. ET. The Exchange proposes to make a conforming amendment to Rule 14.1(c)(2) to change the reference for the starting time of the Pre-Opening Session from 7 a.m. ET to 8 a.m. ET. Through this filing, the Exchange proposes to amend the rule text from SR–EDGX–2011–27,[3] which proposed to change the Pre-Opening Session starting time to 7 a.m. ET. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site 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

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 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

1. Purpose

The Exchange filed a rule change to amend EDGX Rule 1.5(q) to change the starting time of the Pre-Opening Session from 8 a.m. ET to 7 a.m. ET.[4] This change would have allowed the Exchange to compete with other exchanges that open their markets for entry of orders prior to 8 a.m. ET.[5] The Exchange proposes to amend the rule text of its August 25 Rule Filing at this time in order to accommodate Members who initially expressed an interest in the change in Pre-Opening Session time to begin at 7 a.m. ET; but, after further consideration, Members confirmed that they were no longer interested because the additional costs and resources needed to open earlier outweighed any incidental benefits from increased trading activity that they would incur. As such, based on the Exchange's feedback from Members it surveyed in September 2011, the Exchange confirmed that no Members adversely relied upon the August 25 Rule Filing.

At this time, the Exchange has not implemented the 7 a.m. ET starting time for the Pre-Opening Session because it has not notified its Members pursuant to the language in the August 25 Rule Filing.[6] In addition, the Exchange notes Members are not adversely impacted by the amendment to the rule text of the August 25 Rule Filing as no Members were required to incur any costs or make any changes to their systems to comply with the earlier Pre-Opening time if they were not planning to trade beginning at 7 a.m. ET.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65197 (August 25, 2011), 76 FR 54281 (August 31, 2011) (SR–EDGX–2011–27). For the purposes of this filing, the Exchange will refer to SR–EDGX–2011–27 as the ''August 25 Rule Filing.'' Given that the August 25 Rule Filing was immediately effective but not operative, the Exchange proposes to amend its rule text in this filing.

[4] *Id.* The Exchange initially proposed to expand its operational hours to open the System earlier so that Members could enter and execute orders beginning at 7 a.m. ET rather than 8 a.m. ET.

[5] *See* The NASDAQ Stock Market LLC Rule 4617 (opens at 7 a.m. EST). *See also* NASDAQ OMX BX Rule 4617 (opens at 7 a.m. EST); NYSE Arca Equities Rule 7.34 (opens at 1 a.m. Pacific Time).

[6] *See* Securities Exchange Act Release No. 65197 (August 25, 2011), 76 FR 54281 (August 31, 2011) (SR–EDGX–2011–27), stating the Exchange will provide notice to Members in an information circular when the proposed rule change will be effective, which will be no later than January 1, 2012.

Based on the foregoing, the Exchange proposes to amend Rule 1.5(q) and make a conforming amendment to Rule 14.1(c)(2) to change the starting time of the Pre-Opening Session from 7 a.m. ET back to 8 a.m. ET as it appeared before the August 25 Rule Filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[7] in that the proposal 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. The Exchange believes that amending its rule text from the August 25 Rule Filing will afford the Exchange additional time to evaluate the potential benefits of an earlier starting time for the Pre-Opening Session. In addition, the Exchange believes that it is not discriminating against its Members given that the Exchange contacted Members to discuss amending the text of the August 25 Rule Filing, and the Exchange confirmed that no Members had adjusted their infrastructure or incurred any costs in reliance on the August 25 Rule Filing.

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

Because the foregoing 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 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[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] 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 requested that the Commission waive the 30-day operative delay. The Exchange notes that waiver of this requirement will permit the Exchange to immediately remove language from its rules that could otherwise create confusion for Members because the 7 a.m. ET start time has not been implemented.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to avoid confusion among its Members and would immediately provide certainty with respect to the Exchange's rules regarding the start time for the Pre-Opening Session. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

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:

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.* Please include File Number SR–EDGX–2012–03 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–2012–03. 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 a.m. and 3 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–2012–03 and should be submitted on or before February 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 has satisfied this requirement.

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 65197 (August 25, 2011), 76 FR 54281 (August 31, 2011) (SR–EDGX–2011–27), stating the Exchange will provide notice to Members in an information circular when the proposed rule change will be effective, which will be no later than January 1, 2012.

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

[14] 17 CFR 200.30–3(a)(12).