

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 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-NYSEArca-2010-47 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 No. SR-NYSEArca-2010-47. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE

to file the proposed rule change along with a brief description and 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. The Exchange has satisfied the pre-filing requirement.

Arca. 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 No. SR-NYSEArca-2010-47 and should be submitted on or before July 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-14444 Filed 6-15-10; 8:45 am]

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-62248; File No. SR-NYSEAmex-2010-51]**

#### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Bid-Ask Parameters During Auctions**

June 9, 2010.

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 May 28, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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**

The Exchange proposes to amend Rule 925NY and Rule 952NY. The text of the proposed rule change is available on NYSE Amex's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of NYSE Amex, 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 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 those 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 purpose of the proposed rule change is to: (i) Amend Rule 925NY to differentiate the bid-ask differentials for Market Maker open outcry quotations from the requirements for electronically submitted quotations, and (ii) amend Rule 952NY by establishing guidelines for the use of bid-ask parameters in the NYSE Amex System to be used during the opening auction process ("Auction").<sup>3</sup>

Currently, Rule 925NY specifies the bid-ask differential requirements applicable to Market Maker quotations when electronically bidding and offering on the NYSE Amex System during an Auction and in open outcry. With respect to bidding and offering during an Auction, the bid-ask differentials<sup>4</sup> vary depending on the price of the bid. Rule 925NY(b)(4)(A)-(E) states that the quote widths shall not be more than: \$0.25 if the bid is less than \$2; \$0.40 where the bid is at least \$2 but does not exceed \$5; \$0.50 where the bid is more than \$5 but does not exceed \$10; \$0.80 where the bid is more than \$10 but does not exceed \$20; and \$1 where the bid is more than \$20. With respect to electronic quoting on the NYSE Amex System, after an Auction, the bid-ask differential requirement is \$5. The Exchange now proposes to replace the applicable bid-ask differentials for Market Maker quoting obligations during an Auction, with the \$5 quote differential that is in place at all other times.

At the time Rule 925NY was adopted, the obligation for Specialists and Market Makers to provide opening quotes at the described widths was both a longstanding NYSE Amex requirement, and also based on the model of NYSE Arca, Inc., which uses the same underlying technology as the NYSE Amex System.

<sup>3</sup> An Auction is the process by which trading is initiated in a specified options class on NYSE Amex. Auctions are conducted automatically by the NYSE Amex system, NYSE Amex's electronic system for order handling, execution, and reporting.

<sup>4</sup> The Auction bid-ask differentials are known in common parlance as "legal-width quotes."

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

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

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

The original intent of maintaining the obligation for Market Makers to submit narrow, traditional bid-ask requirements for NYSE Amex was to encourage a narrower aggregated Exchange market during the opening auction. Both NYSE Amex and NYSE Arca are often the first market to open a series, and, depending on which one opens a series first there is not necessarily an accurate National Best Bid/Offer ("NBBO") available, and NYSE Amex does not require a "legal width" NBBO quote to open a series. The Exchange also had concern about the quality of markets with the NYSE Amex permit holders adapting to a new system that was substantially different from their previous platform, and placed significantly greater emphasis on Market Maker electronic quoting.

Now, with more than a year's experience operating the NYSE Amex system, ATP Holder Market Makers have adapted well to the enhanced quoting obligations. Additionally, NYSE Amex has instituted increased functionality to define price parameters during the auction process. The system will not conduct an auction in a series until one of two conditions is met: (i) A market maker submits a legal width quote, or (ii) a legal width NBBO is received from OPRA. This is a systemic solution which renders the rules based quoting obligation moot.

With the adoption of the Section 900NY Rules and the migration to the NYSE Amex system, the quoting obligation for all Market Makers other than Specialists was set at 60%, and the Specialist quoting obligation was set at 90%. With these levels, there is no requirement for a Market Maker to submit a quotation for an opening auction. The auction quote width requirement thus imposes limits on a non-existent obligation.

In this regard, the Exchange notes that the market structure on NYSE Amex creates strong incentives for Specialists and competing Market Makers to disseminate competitive prices for the opening. To ensure that orders executed during an Auction are not subject to disadvantageous pricing, NYSE Amex proposes to establish parameters for the opening auction as described in Rule 952NY. Pursuant to this proposed rule change, the NYSE Amex System will not conduct an Auction in a given series unless; [sic] (i) the composite NYSE Amex bid-ask ("BBO")<sup>5</sup> or the composite NBBO, as disseminated by

the Options Price Reporting Agency, is in an acceptable range. For the purposes of the Auction, an acceptable range will be the bid-ask parameters pursuant to Rule 925NY(b)(4)(A)–(E). The Exchange notes that these bid-ask differentials are identical to the existing legal width differentials for Market Maker Auction quotations which this filing proposes to delete. The Exchange feels that by establishing price protection parameters within the Auction process of the NYSE Amex System, rather than just as a requirement for submitted quotes, Customers and other market participants will be afforded a higher level of price protection than they presently have on NYSE Amex. The Exchange notes that this proposed change is for trading on the Exchange's electronic trading platform, and does not in any way affect the bid-ask differentials applicable to open-outcry trading.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system by setting price parameters for the opening Auction rather than rely on a restriction that does not have obligatory performance.

### *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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (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 for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal is based on a similar rule approved by the Commission for NYSE Arca,<sup>10</sup> and raises no novel issues. Therefore, the Commission designates the proposal operative upon filing.<sup>11</sup>

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 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 Number SR-NYSEAmex-2010-51 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>10</sup> See Securities Exchange Act Release No. 62019 (April 30, 2010), 75 FR 25889 (May 10, 2010) (SR-NYSEArca-2010-16).

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> The composite BBO may be made up of an individual market maker quote, a combination of different market maker quotes where one quote represents the bid and another represents the offer, or a combination of market maker quotes and limited orders in the Consolidated Book.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2010-51. 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 a.m. and 3 p.m. 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-NYSEAmex-2010-51 and should be submitted on or before July 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62256; File No. SR-EDGX-2010-02]

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

June 10, 2010.

Pursuant to 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 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 <http://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.

#### 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").<sup>3</sup>

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.<sup>4</sup> EDGX Bylaws identify this ownership structure.<sup>5</sup> 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.<sup>6</sup> 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 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

(approving File Nos. 10-194 and 10-196) (the "Order").

<sup>4</sup> 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.

<sup>5</sup> EDGA Bylaws, Article I., Section kk.

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

<sup>12</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.

<sup>3</sup> See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010)