

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63574; File No. SR-EDGX-2010-17]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change To Amend EDGX Rules 11.9 and 11.5

December 17, 2010.

On November 8, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change regarding Step-Up Orders. The proposed rule change was published for comment in the **Federal Register** on November 24, 2010.<sup>3</sup> On November 23, 2010, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> On December 14, 2010, the Exchange submitted Amendment No. 2 to the proposed rule change, as described in Items I and II below, which items have been prepared by the Exchange.<sup>5</sup> The Commission is publishing this notice of Amendment No. 2 to solicit comments on the proposed rule change, as amended, 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 11.9(b)(1)(C) regarding the description of the Step-up order type. The Exchange also proposes to modify Rule 11.5(c)(7) to allow Mid-Point Match orders entered in response to Step-up orders to be processed pursuant to Rule 11.9(b)(1)(C). The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

This Amendment No. 2 replaces in its entirety the original filing, SR-EDGX-2010-17 (November 8, 2010) and partial Amendment No. 1 (November 23, 2010).

Exchange Rule 11.5(c)(11) defines a Step-up order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)." Exchange Rule 11.9(b)(1)(C), in turn, states that orders shall be displayed to Users<sup>6</sup> (hereinafter referred to as "Members"),<sup>7</sup> in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed five hundred milliseconds, as determined by the Exchange (the "Step-up Display Period)."

In this amendment, the Exchange proposes to change the Step-up Display Period, which is currently set at 25 milliseconds, to 10 milliseconds. The Exchange also proposes to eliminate the prior discretion in the rule to vary the Step-up Display Period without a rule filing.

The Exchange proposes to amend Rule 11.9(b)(1)(C) to add language to the rule text which will provide that at the conclusion of the Step-up Display Period, the Step-up order shall execute against responsive User orders priced at or within the NBBO, prevailing at the end of the Step-up Display Period on a price/time priority basis consistent with Rule 11.8(a)(1) and (2). Rules 11.8(a)(1) and (2), in turn, provide that orders of

Users shall be ranked and maintained in the EDGX Book based on the following priority: (i) The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell); (ii) where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order. Commencing on the six month anniversary of {Insert Commission approval date of this rule filing}, the orders eligible for executing against Step-up orders shall be expanded to include User orders priced better but not outside the NBBO at the end of the Step-up Display Period (such orders, "Eligible Book Orders").

In effect, Step-up orders permit a Member to initiate a price auction of such orders by displaying order solicitation information to other Members simultaneously, provided such other Members have elected to receive such order information (each such Member, an "Electing Member.") After the passage of the Step-up Display Period, the Step-up orders are executed against responses and, commencing on the six month anniversary of {Insert Commission approval date of this rule filing}, Eligible Book Orders, on a price/time priority basis in accordance with Rule 11.8(a)(1) and (2). Responses are accumulated for the Step-up Display Period by the Exchange, rather than processed at arrival time. Eligible Book Orders will continue to be eligible for execution against the EDGX Book during the Step-up Display Period.

For example, assume the NBBO (national best bid/offer) is 10.10 × 10.12. If Member A enters a Step-up order to buy 500 shares of ABC security at the prevailing national best offer (\$10.12) and such Step-up order cannot execute against the EDGX Book then Electing Members will receive a solicitation to sell 500 shares of ABC security at \$10.12 or lower. If Electing Members X, Y, and Z transmit an order to sell 500 shares (or less) of ABC security at the prevailing national best offer or lower (*i.e.*, \$10.12 or lower), within the Step-up Display Period, they would all participate in a price auction, which would be awarded at the end of the Step-up Display Period on a price/time priority basis based on the prevailing NBBO at the end of such time period. Therefore, if EDGX receives an order to sell 500 shares at \$10.11 from Electing Member X, then receives an order to sell 200 shares at \$10.10 from Electing Member Y and lastly receives an order to sell 200 shares at \$10.11 from Electing Member Z,

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63336 (November 18, 2010), 75 FR 71781.

<sup>4</sup> In Amendment No. 1, the Exchange corrected an error in the purpose section of the original filing purpose section changing the current duration of the Step-Up Display Period from 25 milliseconds to 10 milliseconds.

<sup>5</sup> Amendment No. 2 replaces in its entirety the original filing and Amendment No. 1. In Amendment No. 2, the Exchange proposes to: (a) Change the Step-Up Display Period (as defined below) from 25 milliseconds to 10 milliseconds, and (b) eliminate the discretion in the rule to vary the Step-Up Display Period without a rule filing.

<sup>6</sup> Exchange Rule 11.9(b)(1) provides that (prior to display of an order to a User), an incoming order shall first attempt to be matched for execution against orders in the EDGX Book.

<sup>7</sup> Exchange Rule 1.5(cc) defines a User as any "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

Electing Member Y would have priority over Electing Members X and Z based on price priority, assuming that such orders were received within the Step-up Display Period. As a result, Electing Member Y's order would execute against Member A's Step-up order for 200 shares at \$10.10. The remaining 300 shares would be awarded to Electing Member X at \$10.11, since Electing Member X has time priority over Electing Member Z. Following the six month anniversary of {Insert Commission approval date of this rule filing}, if non-electing Member W had an order to sell 500 shares at \$10.11 that was entered before Electing Member X's order and it was not otherwise executed on the EDGX Book prior to the end of the Step-up Display Period, then the remaining 300 shares in the above example would be executed against Member W's order, since Member W would have time priority over both Electing Members X and Z.

The Exchange believes that this proposed amendment provides more transparency regarding the timing associated with the price auction.

The Exchange also proposes to amend Rule 11.5(c)(7) to allow Mid-Point Match orders that are entered in response to Step-up orders to be eligible for execution pursuant to Rule 11.9(b)(1)(C), as described above.

In response to the price auction described above, the Exchange will not accept orders priced in subpennies. The respondent User could enter a Mid-Point Match order, however, that would be eligible for execution at the midpoint of the prevailing NBBO at the end of the Step-up Display Period.

The Exchange believes the midpoint response described above will provide an additional pricing mechanism for the respondent User that is willing to offer price improvement, but is unwilling to cross the spread between the national best bid and offer to do so. By providing this option, the Exchange believes that a greater proportion of Step-up orders will receive price improvement. In addition, because the midpoint response will execute all trades at the midpoint of the NBBO, it will never execute a trade outside of the NBBO. If the national best bid for a security underlying a Step-up order equals or "locks" the national best offer for such security, a Mid-Point Match order response will execute all trades at the locked price.

The Step-up order process will not generate an execution if the national best bid (offer) for the security underlying a Step-up order is priced better than or "crosses" the national best offer (bid) for such security. In the event

of a "crossed" market or an absence of responsive User orders at or within the NBBO and, commencing on the six month anniversary of {Insert Commission approval date of this rule filing}, Eligible Book Orders at the end of the Step-up Display Period, the Step-up process shall terminate and the Step-up order shall be cancelled or routed in accordance with the User's instructions.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>8</sup> which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>9</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it seeks to promote the efficient execution of investor transactions, and thus investor confidence, over the long term by providing additional transparency relating to the execution of Step-up orders.

### 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

Within 45 days of the date of publication of the notice of the proposed rule change in the **Federal Register**<sup>10</sup> or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

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

<sup>9</sup> 15 U.S.C. 78k-1(a)(1).

<sup>10</sup> The Commission notes that the notice of the proposed rule change was first published in the **Federal Register** on November 24, 2010.

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## 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-EDGX-2010-17 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-2010-17. 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,<sup>11</sup> 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing, as amended, also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

<sup>11</sup> The text of the proposed rule change, as amended, is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

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-2010-17 and should be submitted on or before January 13, 2011.

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

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

[FR Doc. 2010-32286 Filed 12-22-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63567; File No. SR-DTC-2010-14]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Authorize Additional Shares of Preferred Stock and Designate Shares as Series A Preferred Stock

December 16, 2010.

#### I. Introduction

On October 22, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2010-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on November 12, 2010.<sup>2</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

In 1999, DTC's Certificate of Organization was amended ("1999 Amendment") to provide for the authorization and issuance of 1,500,000 shares of preferred stock, par value \$100 per share.<sup>3</sup> The 1999 Amendment also provided that the preferred stock could be issued in one or more classes having such designations, relative rights, preferences, or limitation as fixed by the

Board of Directors of DTC at the time of issuance of any such preferred stock. DTC's Certificate of Organization has been amended three times since the 1999 Amendment to provide for the issuance of variable rate, noncumulative, nonvoting shares of Series A preferred stock, par value \$100 per shares, which are preferred over DTC's common stock as to dividends and in the event of liquidation ("Series A Preferred Stock"). The first such amendment (filed in 2000) provided for the issuance of 750,000 shares of the Series A Preferred Stock.<sup>4</sup> The second amendment (filed in 2006) provided for the issuance of an additional 500,000 shares of Series A Preferred Stock.<sup>5</sup> The third amendment (filed in 2009) provided for the issuance of an additional 250,000 shares of Series A Preferred Stock.<sup>6</sup>

DTC participants are required to purchase and own shares of the Series A Preferred Stock in proportion to their use of DTC services. DTC treats the Series A Preferred Stock held by participants substantially the same as it treats the mandatory cash deposits made by participants to the Participants Fund for purposes of collateralizing securities transactions, limiting net debit positions, implementing default procedures, and allocating unrecovered losses.

In order to further increase its capital, DTC is amending its Certificate of Organization<sup>7</sup> to authorize an additional 1,750,000 shares of Series A Preferred stock with such rights, preferences, and limitations as currently provided in its Certificate of Organization.<sup>8</sup>

<sup>4</sup> Securities Exchange Release No. 43197 (August 23, 2000), 65 FR 52459 (August 29, 2000) [File No. SR-DTC-2000-02].

<sup>5</sup> Securities Exchange Act Release No. 54775 (November 17, 2006), 71 FR 68662 (November 27, 2006) [SR-DTC-2006-14].

<sup>6</sup> Securities Exchange Act Release No. 59612 (March 20, 2009), 74 FR 13488 (March 27, 2009) [File No. SR-DTC-2009-06].

<sup>7</sup> On October 20, 2010, DTC's sole stockholder, The Depository Trust & Clearing Corporation, authorized DTC to amend its Certificate of Organization to increase the number of shares of authorized preferred stock, as required by Section 8003 of the Banking Law of the State of New York. DTC is also required to seek approval from the New York State Banking Department, which concurrent with the filing of this proposed rule change, it has done.

<sup>8</sup> DTC, as a member institution of the Federal Reserve System, is subject to capital guidelines issued by the Board of Governors of the Federal Reserve System. To be considered "well-capitalized" under these guidelines, DTC must, among other things, maintain a Total Risk-Based Capital Ratio of at least 10%, a Leverage Ratio of at least 5%, and a Tier 1 Risk-Based Capital Ratio of at least 6%.

The authorization and issuance of this additional 1,750,000 shares will increase the number of shares

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest.<sup>9</sup> The Commission believes that the rule change is consistent with DTC's obligations under the Exchange Act because the rule change will enable DTC to be "well capitalized" while not adversely affecting its ability to adequately safeguard the securities and funds in its custody or control or for which it is responsible.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2010-14) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 2010-32225 Filed 12-22-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12418 and #12419]

### U.S. Virgin Islands Disaster #VI-00006

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the U.S. Virgin Islands dated 12/15/2010.

*Incident:* Tropical Storm Tomas.  
*Incident Period:* 11/08/2010 through 11/12/2010.

*Effective Date:* 12/15/2010.  
*Physical Loan Application Deadline Date:* 02/14/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/15/2011.

of Series A Preferred Stock to a total of 3,250,000 shares with a total par value of \$325 million. This will enable DTC to continue to be "well capitalized" under the capital guidelines issued by the Board of Governors of the Federal Reserve System.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>2</sup> Securities Exchange Act Release No. 63254 (November 5, 2010), 75 FR 69514 (November 12, 2010).

<sup>3</sup> The amendment was the subject of a DTC proposed rule change approved by the Commission. Securities Exchange Act No. 34-41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR-DTC-1999-08]. The amendment was also approved by the New York State Superintendent of Banks.