

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 74032 / January 12, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16332**

**In the Matter of**

**EDGA EXCHANGE, INC., and**  
**EDGX EXCHANGE, INC.,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 19(h) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (the “Commission”) deems it necessary and appropriate in the public interest and for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) (collectively, “the Exchanges” or “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondents’ Offers, the Commission finds that:

## A. Introduction

1. Congress has subjected national securities exchanges to significant regulatory compliance obligations because of their critical role in the national market system. In addition to requiring compliance with the federal securities laws and their own rules, the Exchange Act also requires exchanges and other self-regulatory organizations to file proposals for new rules and rule changes with the Commission for public comment and, in many cases, Commission approval. Pursuant to Section 19(b)(1) of the Exchange Act, an exchange's proposed new rule or rule change shall not take effect unless approved by the Commission or otherwise permitted by Section 19(b).

2. The Exchange Act also requires the Commission to make certain findings about an exchange's rules before the Commission grants its registration as a national securities exchange. The Exchange Act requires that the Commission determine that, among other things, the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.<sup>1</sup> Additionally, the rules of an exchange may not be designed, among other things, to permit unfair discrimination between customers, issuers, brokers, or dealers, or impose any burden on competition not necessary or appropriate.<sup>2</sup>

3. An important category of exchange rules are those that govern the exchange's order types. Order types are the primary means by which market participants communicate their instructions for the handling of their orders to the exchange. Complete and accurate disclosure of an exchange's order types and order handling procedures is necessary to promote a fair, orderly, and free and open market. It is essential that an exchange operate in compliance with its own rules regarding order types so that the exchange's members and all other participants in trading that occurs on an exchange can understand on what terms and conditions their trading will be conducted. When an exchange fails to completely and accurately describe its order types in its rules, it creates a significant risk that the manner in which those order types operate will not be understood by all market participants, thereby compromising the integrity and fairness of trading on that exchange. This risk is compounded when the exchange discloses information regarding the operation of those order types to some but not all of its members.

4. From the time that EDGA and EDGX began operating as registered securities exchanges in July 2010 until late 2014, they failed to submit and obtain Commission approval of proposed rules that accurately reflected the operation of "price sliding" on the Exchanges, and therefore failed to operate in compliance with their own rules.

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<sup>1</sup> See Exchange Act Sections 6(b)(5) and 6(b)(8).

<sup>2</sup> *Id.*

5. From July 2010 until late 2014, the Exchanges' rules provided for a single "displayed price sliding process" that was identified as the default for a non-routable order unless the member had entered instructions not to use that process. The rules of both Exchanges stated:

An [Exchange] Only Order that, at the time of entry, would cross a Protected Quotation will be repriced to the locking price and ranked at such price in the [Exchange] Book. An [Exchange] Only Order that, if at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be displayed by the System at one minimum price variation ("MPV") below the current [National Best Offer] (for bids) or to one MPV above the current [National Best Bid] (for offers) (collectively, the "displayed price sliding process"). In the event the [National Best Bid and Offer] changes such that the [Exchange] Only Order at the original locking price would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the original locking price.<sup>3</sup>

6. The displayed pricing sliding process described in the rules did not accurately describe how this functionality of the Exchanges operated. Instead of a single price sliding process as described in their rules, the Exchanges accepted three different price sliding order types, called "Single Re-Price," "Price Adjust," and "Hide Not Slide" ("HNS"). These three variations of price sliding were not accurately reflected in the rules filed with, or filed with and approved by, as applicable, the Commission under Section 19(b) of the Exchange Act.

7. The Exchanges' rules did not use the term "Hide Not Slide" and did not completely and accurately describe how HNS operated.

8. As described herein, although the Exchanges provided some information about priority and other characteristics of HNS in technical specifications made available to members, the technical specifications did not contain complete and accurate information regarding the operation of HNS.<sup>4</sup> The Exchanges did, however, provide complete and accurate information about HNS to some (but not all) members. As a result, the Exchanges created a significant risk that the manner in which HNS operated would not be understood by all of their members.

9. The "Single Re-Price" and "Price Adjust" order types were not accurately described in the Exchanges' rules and, at various times, the Exchanges employed Price Adjust as the default functionality on the Exchanges. This further increased the risk that the manner in which price sliding order types operated would not be understood by all members.

10. As a result of such conduct, EDGA and EDGX each violated Sections 19(b) and 19(g) of the Exchange Act. EDGA and EDGX also violated a previous Commission order issued

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<sup>3</sup> See EDGX Rule 11.5(c); EDGA Rule 11.5(c).

<sup>4</sup> Technical specifications are not a substitute for exchange rules and do not satisfy an exchange's obligation to submit proposed rules and proposed rule changes under Section 19(b) of the Exchange Act.

against them on October 13, 2011, that required Respondents to cease and desist from committing or causing any violations and any future violations of Sections 19(b) and 19(g) of the Exchange Act.<sup>5</sup>

## **B. Respondents**

11. **EDGA Exchange, Inc.** is registered with the Commission as a national securities exchange pursuant to Section 6(a) of the Exchange Act and is a self-regulatory organization (“SRO”). Since July 2010, EDGA has operated as an all-electronic exchange. EDGA offers trading in all U.S. listed equity securities and generally executes approximately 2-3% of the U.S. national average daily trading volume in NMS stocks.<sup>6</sup> From July 2010 until July 2011 and from September 2012 to the present, EDGA has maintained a taker-maker model where members receive rebates for removing liquidity and pay a fee for adding liquidity. From August 2011 until August 2012, EDGA maintained a maker-taker model where members paid a fee for removing liquidity and received a rebate for adding liquidity.

12. **EDGX Exchange, Inc.** is registered with the Commission as a national securities exchange pursuant to Section 6(a) of the Exchange Act and is an SRO. Since July 2010, EDGX has operated as an all-electronic exchange. EDGX offers trading in all U.S. listed equity securities and generally executes approximately 8-9% of the U.S. national average daily trading volume in NMS stocks. Since July 2010, EDGX has maintained a maker-taker model where members pay a fee for removing liquidity and receive a rebate for adding liquidity.

13. On May 7, 2009, EDGA and EDGX submitted to the Commission Form 1 applications seeking registration as national securities exchanges under Section 6 of the Exchange Act. When EDGA and EDGX applied for registration as national securities exchanges, each was operating as a separate trading platform of Direct Edge ECN, LLC.<sup>7</sup> In an order dated March 12, 2010 (the “Order Granting Registration”), the Commission granted the applications of EDGA and EDGX for registration as national securities exchanges.<sup>8</sup>

14. From 2009 through January 2014, EDGA and EDGX were owned and operated by Direct Edge Holdings, LLC (“Direct Edge”). In August 2013, Direct Edge and BATS Global Markets, Inc. (“BATS”), the operator of certain other all-electronic exchanges, announced that

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<sup>5</sup> *In the Matter of EDGX Exchange, Inc.*, Exchange Act Release No. 65556 (Oct. 13, 2011).

<sup>6</sup> *See* 17 C.F.R. § 242.600(b)(46) and (47) (definition of “NMS stock” and “NMS security”).

<sup>7</sup> An ECN, or electronic communication network, is a trading center that displays quotations in the consolidated quotation data that is widely distributed to the public. *See Concept Release on Equity Market Structure*, 75 Fed. Reg. 3594, 3599 (Jan. 21, 2010); *see also* Rules 300–303 under the Exchange Act, 17 C.F.R. §§ 242.300–303. An ECN is regulated by the Commission as an alternative trading system (“ATS”).

<sup>8</sup> *In the Matter of the Applications of EDGX Exchange, Inc., and EDGA Exchange, Inc. for Registration as National Securities Exchanges: Findings, Opinion, and Order of the Commission*, Exchange Act Release No. 34-61698 (Mar. 12, 2010), 75 Fed. Reg. 13151 (Mar. 18, 2010) (File Nos. 10-194 and 10-196).

they would merge. The two firms completed their merger in January 2014. EDGA and EDGX currently are owned and operated by BATS.

15. On October 13, 2011, the Commission issued an administrative order against EDGA, EDGX and Direct Edge ECN LLC, doing business as DE Route. The order found that EDGA, EDGX, and DE Route violated the federal securities laws in connection with two systems incidents occurring in November 2010 and April 2011. Among other violations, the order found that in responding to the November 2010 incident, EDGA, EDGX and DE Route improperly assumed and traded out of member positions through DE Route's error account in violation of the Exchanges' rules. The order found that EDGA and EDGX violated Sections 19(b) and 19(g) of the Exchange Act and other provisions. Without admitting or denying the Commission's findings, EDGA and EDGX consented to the Commission order that, among other things, required them to cease and desist from further violations of these provisions.

### C. Facts

#### Background

16. Exchanges and ECNs typically offer different categories of order types, including both displayed and undisplayed, or "hidden," order types for trading. Displayed orders are included in market data feeds. "Hidden" orders are not displayed in the market data feeds or visible to market participants. However, hidden orders may execute against incoming orders. Displayed orders are given execution priority over undisplayed orders at the same price.

17. In 2005, the Commission adopted Regulation NMS, a series of regulatory changes designed to modernize and strengthen the national market system ("NMS") for equity securities. Rule 610 of Regulation NMS, known as the Access Rule, enacted new requirements for accessing quotations in NMS securities.<sup>9</sup> In particular, Rule 610(d) requires national securities exchanges to establish, maintain, and enforce written rules that require their members to reasonably avoid displaying quotations that lock or cross any protected quotation<sup>10</sup> in an NMS stock. For the purposes of this rule, a crossed market exists when a protected bid price of a security exceeds the protected offer price, and a locked market exists when a protected bid price is identical to a protected offer price.

18. After the adoption of Rule 610(d), Direct Edge, which at that time was operating EDGA and EDGX as ECNs, developed an order handling procedure, known generally as price sliding, for non-routable orders<sup>11</sup> that would otherwise lock or cross a protected quotation.<sup>12</sup>

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<sup>9</sup> See 17 C.F.R. § 610.

<sup>10</sup> See 17 C.F.R. §§ 600(b)(57), (58) (defining "protected bid," "protected offer," and "protected quote"). Protected quotations generally are the best bids and offers displayed by a national securities exchange or a national securities association.

<sup>11</sup> A "non-routable" order is an order that must be executed, posted or cancelled by the exchange to which it is sent; the exchange may not route it to another market center.

Under Direct Edge's price-sliding functionality, an order that would lock or cross a protected quotation was to be displayed and "ranked" (*i.e.*, be executable at) one minimum price variation away from the locking price. The ECNs would subsequently unslide and re-price the orders to their original locking prices when market conditions permitted them to be displayed at the original locking prices. When unslid, the order would receive a new time stamp and be treated as having been newly received by the ECNs. For example, if the national market system's best protected bid was \$7.99 and best protected offer was \$8.00 for a security, a bid at \$8.00 would lock the \$8.00 protected offer. As a result, the \$8.00 bid would be displayed and ranked at \$7.99, at which point it would only be able to execute at a price up to \$7.99. Similarly, an offer at \$7.99 would lock the \$7.99 protected bid and thus would be instead displayed and ranked at \$8.00, at which point it would only be able to execute at a price of \$8.00 or higher. Once the National Best Bid and Offer ("NBBO") changed so that the original price would no longer lock or cross a protected quotation, the displayed price of the order would "unslide" back to its original locking price, at which time the order would receive a new time stamp and would now be able to execute at that higher (lower) bid (offer) price. At the time that EDGA and EDGX operated as ECNs (before becoming exchanges), this price sliding functionality was the default on both ECNs for any non-routable order that would lock or cross a protected quotation. Around the same time, other trading centers also developed price sliding functionalities in order to display incoming non-routable orders that upon entry would lock or cross a protected quotation without violating Rule 610(d) of Regulation NMS.

19. The "ranking" and "time stamping" of orders are terms used by market centers with "price-time" priority to describe how they determine execution priority for orders for the same security. The "ranking" of an order reflects the price at which the market participant that sent the order is willing to trade. More aggressively priced orders are "ranked" higher, meaning that they may be executed at more aggressive prices. For example, an order to buy securities that can execute at a price as high as \$8.00 is more aggressive, and ranked higher, than an order to buy securities that can execute up to a price of only \$7.99. The market participant that sent the \$8.00 order is willing to buy securities for a higher price than the market participant who sent the \$7.99 order. Generally, between two orders, the order that is more aggressively priced will receive execution priority and a higher "ranking." In this example, if the exchange were to receive a new order to sell securities for \$7.99, the buy order that was priced up to \$8.00 would receive the execution before the buy order that was priced only up to \$7.99.

20. For two displayed orders that have equally aggressive pricing (are willing to execute at the same prices), equity exchanges generally give priority to the order that was first received. Exchanges apply time stamps to orders to identify when they were received. For multiple displayed orders ranked at the same price, the earlier time-stamped order will typically have execution priority over orders with later time-stamps. If an existing order receives a new time stamp, for example, under circumstances where certain parameters of an order are modified,

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<sup>12</sup> Not all non-routable orders lock or cross a protected quotation at the time of entry. Price sliding functionality operates to handle those orders that lock or cross a protected quotation at the time of entry and therefore cannot be displayed at the price at which they were entered.

the order is treated as having been newly submitted and will be re-prioritized relative to other existing orders at that same execution price.

**Direct Edge Developed and Introduced Hide Not Slide  
Following the Request of a Significant Market Participant**

21. Beginning in late 2008, a high frequency trading firm (“Trading Firm A”), a subscriber of the Direct Edge ECNs, encouraged Direct Edge to develop an alternative to its existing price sliding functionality that would enable an order that would lock or cross a protected quotation upon entry to retain its priority (or queue position) in Direct Edge’s order book. Trading Firm A informed Direct Edge that it sought this alternative because Direct Edge’s existing price sliding functionality, which re-priced and ranked the orders to one minimum price variation away from the locking price and assigned new time stamps to price slid orders when they were unslid back to the original locking price, caused those orders to lose their order book priority to later arriving orders at the locking price. Trading Firm A reported that this alternative would be similar to functionalities developed and offered at certain other trading centers.

22. Trading Firm A explained to Direct Edge that in order to generate profits from its trading strategy, which was designed to capture spreads and/or collect rebates offered by trading centers for providing liquidity, it required a high degree of certainty that it could enter and exit individual trades at its intended prices. Trading Firm A informed Direct Edge that one of the ways it sought to achieve such certainty was through its queue position. Trading Firm A further informed Direct Edge that under the then-existing price sliding functionality, it lost its intended place in the order book queue because its orders were price slid and ranked upon entry to a less aggressive price than it was willing to pay. Then, when the orders were unslid and re-priced/re-ranked back to the locking price, it at times lost its queue position to later arriving orders at the locking price because its orders received new time stamps. Moreover, in certain circumstances, Trading Firm A’s unslid orders, after receiving a new time stamp and thus losing their order book priority, would execute as takers of liquidity and thereby be charged a fee, as opposed to collecting a rebate (as intended by Trading Firm A).

23. Trading Firm A requested that Direct Edge develop an alternative price-sliding functionality that would permit a displayed order that would otherwise lock or cross a protected quotation to “hide” and be ranked and available to execute on Direct Edge’s order book at its original locking price, as opposed to being price-slid and ranked at a new price. Trading Firm A also requested that the order be permitted to “light up” and become displayed at the original locking price if market conditions permitted, while retaining its original ranking and time stamp, and thus its queue position in the order book. Trading Firm A further advised Direct Edge that implementation of such an order type would likely cause it to increase the order flow that it sent to Direct Edge from 4-5 million orders per day to 12-15 million orders per day. Additional order flow would be beneficial to Direct Edge because it would increase its market volume and its revenue.

24. Following Trading Firm A’s request, and also because of the possible benefits the change would provide to other market participants similar to Trading Firm A, Direct Edge adopted this order type functionality and referred to it as HNS. Under HNS, an order that would

lock or cross a protected quotation upon entry would be displayed one minimum price variation away from the original locking price but would be ranked and “hidden” on the order book at the original locking price and be able to execute at that price. This was unlike Direct Edge’s then-existing default price-sliding functionality, which re-ranked and re-priced orders one minimum price variation away from the locking price and the orders could execute only at that lower (higher) bid (offer) price. If market conditions changed such that the HNS order could be displayed at that original price without locking or crossing a protected quotation, Direct Edge would subsequently display (*i.e.*, “unhide”) the HNS order at its ranked and executable price without appending a new time stamp and without affecting the order’s prioritization compared to other orders at that same ranked price.

25. Because it was ranked and available to execute at the more aggressive locking price, a HNS order would have execution priority over orders that were originally submitted at the same price but subjected to Direct Edge’s then-existing default price sliding functionality. Those orders were price slid to and ranked/re-priced to potentially be executed at a less aggressive price—one minimum price variation away from the locking price. If market conditions changed such that the orders could be displayed at the original locking price, and the price slid orders were unslid and re-ranked back to the original locking price, they received a new time stamp and were treated as newly received. Having the same price as the HNS order but a later time stamp, they would be ranked after the HNS order that retained its original time stamp and was always ranked at the more aggressive locking price.

26. Direct Edge, in May 2009, began a phased roll-out of HNS. Direct Edge published amended technical specifications to enable subscribers to place HNS orders and issued a trade desk notification e-mail announcing the introduction of HNS to its then-existing ECN subscribers.<sup>13</sup> The notification, dated May 27, 2009, stated, among other things, that the new HNS order type, which was ranked and hidden at the locking price, and did not receive a new time stamp when unslid, allows “orders originally submitted as display-eligible to be hidden and price-adjusted, rather than price-adjusted, in order to maintain their book priority.” The notification further stated that without using HNS, the order would “lose priority because it receives a new time stamp,” whereas using HNS would allow an order to “maintain[] its priority.”

27. The trade desk notification, in addition to being distributed via e-mail, was also posted on and remained on Direct Edge’s website. However, the information contained in the trade desk notification about the operation of HNS became outdated shortly thereafter, as Direct

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<sup>13</sup> On or about April 22, 2009, approximately two weeks prior to the release of HNS, Direct Edge made publicly available, on its website, a revised version of its FIX specifications to reflect the planned release of HNS. FIX, an acronym for Financial Information eXchange, is an electronic communications protocol initiated in 1992 for international real-time exchange of information related to the securities transactions and markets. The revised FIX specifications did not include all of the information contained in the announcement email. The FIX specifications, in the “Execution Instruction” field, under the heading “New Order Single-From Client” stated: “h=Hide Not Slide eligible; if locking or crossing the NBBO, order will be adjusted to post as follows: Hidden orders will be booked at the locking price. Displayed orders will be displayed at a compliant price (1 tick worse than the NBBO) and also be booked as hidden at the locking price.”



Edge made modifications (as discussed further below) to the operation of HNS. Direct Edge did not issue any further communication (such as a trade desk notification) to all members notifying them about how HNS operated or how HNS had been modified.

**While its Exchange Registration Applications were Pending, Direct Edge Modified  
Hide Not Slide without Amending its Proposed Rules**

28. On May 7, 2009, several days after the phased implementation of HNS began, Direct Edge filed Form 1 applications with the Commission to register EDGA and EDGX as national securities exchanges. As part of the Form 1 applications, Direct Edge submitted to the Commission proposed rules that described, in pertinent part, EDGA and EDGX's available order types and order handling routines. During the period when the applications were pending, Direct Edge modified how HNS functioned on EDGX but did not update the Form 1 application to reflect such changes.

29. In early 2009, Direct Edge began planning for a new technology platform, referred to internally as the "Next Gen Platform," to replace the platform in use on EDGA and EDGX when they operated as ECNs. Development work on this platform's functionalities began in or around May 2009, around the same time that HNS was released. The new platform included a Midpoint Match, or "MPM," order on EDGX. An MPM order is an undisplayed order that can only be executed at the mid-point of the NBBO.

30. As a result of its addition of the MPM order, Direct Edge also made changes to the behavior of HNS orders on EDGX. Pursuant to these changes, HNS orders that locked or crossed a protected quotation would no longer be ranked and "hidden" at the original locking price, but would instead be re-priced, ranked, and "hidden" at the mid-point of the NBBO and could execute at the NBBO mid-point. Direct Edge also originally intended that MPM orders would have execution priority over HNS orders when those orders were executed at the midpoint of the NBBO.

31. In May 2009, Direct Edge began contacting certain users of HNS orders and potential users of the proposed MPM order, including Trading Firm A and another high frequency trading firm ("Trading Firm B"), to solicit their feedback on the proposed MPM order logic. Trading Firm A and Trading Firm B both expressed concerns about the possible implications of the proposed MPM order logic on their trading strategies. In particular, Trading Firm A and Trading Firm B reacted negatively to Direct Edge's plan to re-price and rank HNS orders at the NBBO mid-point on EDGX, informing Direct Edge that they preferred to know the prices at which their orders were ranked on the order book and not have the prices automatically adjusted by the platform. Trading Firm A and Trading Firm B also reacted negatively upon learning that Direct Edge proposed to give MPM orders order book priority over HNS orders. Trading Firm A and Trading Firm B took the position that HNS orders should have execution priority over MPM orders (which were not displayed) because the HNS orders were displayed orders that were entered with more aggressive limit prices.

32. Direct Edge ultimately agreed that HNS orders should have execution priority over MPM orders for the reasons stated by Trading Firm A and Trading Firm B. Direct Edge

revised the EDGX trading system so that HNS orders ranked at the midpoint of the NBBO would have execution priority over MPM orders. As discussed below, neither HNS nor these changes made to how HNS operated were accurately described in EDGX's proposed rules.

33. Trading Firm B also expressed a preference regarding the handling of HNS orders designated as "post only," which were to be executed only if they would add liquidity and thus receive a rebate.<sup>14</sup> Trading Firm B preferred that "post only" orders be permitted to execute and take liquidity, and thus be charged a taker fee (instead of earning a rebate), in circumstances under which Trading Firm B's order received price improvement (by virtue of executing at the less aggressive NBBO mid-point as opposed to the more aggressive locking price) in an amount sufficient to offset the loss of the rebate that Trading Firm B would have earned had the order created liquidity.

34. Following Trading Firm B's reaction, Direct Edge, prior to EDGX commencing operations as an exchange, modified the handling of HNS orders designated as "post only." Pursuant to this modification, a "post only" HNS order could execute and take liquidity (and thus be charged a fee), but only in circumstances under which the execution would be at a less aggressive price and would result in the HNS order receiving price improvement in an amount that exceeded the loss of the rebate that it would have earned had it been posted before being executed. This was not explained in the proposed rules that EDGX filed with the Commission, which defined a "post only" order as "[a]n order that is to be ranked and executed on the Exchange . . . without routing away to another trading center except that the order will not remove liquidity from the EDGX Book absent an order instruction to the contrary."

35. Direct Edge viewed these changes as beneficial to users of HNS and to Direct Edge. For users of HNS, HNS orders would have execution priority over MPM orders, as well as over other price slid orders when the other price slid orders were unslid, re-priced and ranked at the original locking price. For Direct Edge, the revised logic would allow more executions to occur on EDGX and would also increase Direct Edge's revenue on EDGX by virtue of both the increase in executions and by charging taker fees to both the HNS and MPM orders on transactions executing at the NBBO mid-point, as opposed to charging one order a taker fee but having to pay a rebate to the other order.

**Direct Edge Began Operating EDGA and EDGX with a Hide Not Slide Order Type that was not Completely and Accurately Described in the Exchanges' Rules**

36. EDGA and EDGX's Form 1 applications, which included the proposed order type rules for EDGA and EDGX, were published for public comment on September 17, 2009. The

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<sup>14</sup> A post only order is an order that only will execute if it first is added, or "posted," to the exchange's order book and then, after being posted, is matched with another order. A post only order will not be matched with an order that already is present on the exchange's order book. "Post only" orders are often defined as orders that will not remove liquidity. One reason for sending a post only order is to earn the rebate that many exchanges pay for orders that are added to the order book before executing, which is known as "adding liquidity."

Commission issued the Order Granting Registration on March 12, 2010. EDGA and EDGX began operating as exchanges in July 2010.

37. The proposed rules that EDGA and EDGX filed and that the Commission found consistent with Section 6 of the Exchange Act did not completely and accurately describe the HNS order type or its underlying functionality. As described below, EDGA and EDGX's rules did not accurately describe their operations at the time of their launch.

38. EDGA's and EDGX's rules included a "displayed price sliding process." Displayed price sliding was the only price sliding functionality provided for in EDGA and EDGX's rules.<sup>15</sup> Pursuant to the displayed price sliding rule, which was identical, as written, for both Exchanges, an order that would cross a protected quotation at the time of entry would "be repriced to the locking price and ranked at such price in the [order book]." In addition, on both Exchanges, an order that, at the time of entry, would lock or cross a protected quotation would "be displayed . . . at one minimum price variation below the current [National Best Offer] (for bids) or at one [minimum price variation] above the current [National Best Bid] (for offers) . . . ." In the event the NBBO changed such that "the . . . Order at the original locking price would not lock or cross a Protected Quotation, the order will receive a new timestamp and will be displayed at the original locking price."<sup>16</sup>

39. The "displayed price sliding process" set forth in the rules did not accurately describe the manner in which HNS operated on EDGX. For example, since July 2010, a HNS order on EDGX that would lock or cross a protected quotation was displayed at a price that was one minimum price variation away from the locking price but was executable, ranked and hidden at the mid-point of the NBBO and, hence, could receive price improvement over what was described in the rules in certain situations. The HNS order could execute at the NBBO mid-point, and it also had discretion to execute to the locking price. EDGX's "displayed price sliding process" did not completely and accurately describe how a HNS order on EDGX operates because an HNS order on EDGX is ranked and hidden at the mid-point of the NBBO and can execute at the midpoint with discretion to execute to the locking price. The proposed rules also did not describe the situation in which a "post only" HNS order on EDGX could take liquidity in circumstances where it would be economically advantageous for the HNS order to do so.

40. The rules, which did not state that HNS orders would be re-ranked and re-priced to the NBBO mid-point, also did not explain that the HNS order on EDGX had execution priority over all non-displayed orders that were eligible for mid-point execution when the HNS order was positioned at the NBBO mid-point. Nor did the proposed rules explain that, although a HNS order received a new time stamp if the NBBO changed such that the original locking

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<sup>15</sup> The proposed rules also did not accurately describe how the types of price sliding that had been available on the Direct Edge ECNs operated.

<sup>16</sup> The above definition was contained in the proposed rules submitted with Direct Edge's September 2009 amendments to the Form 1 applications. The Form 1 applications and proposed rules were further amended in February 2010, but the amendments were immaterial in this respect and did not result in any changes to the language discussing "displayed price sliding."

price would no longer lock or cross a protected quote and the HNS order could be displayed at that price, the EDGX system re-ranked, re-priced and displayed the HNS order at the original locking price ahead of all other orders, including other types of earlier price slid orders, at that price, except for an arriving day intermarket sweep order (“ISO”) that enabled the original locking price to be displayed on EDGX.<sup>17</sup>

41. The “displayed price sliding process” set forth in the rules also did not completely and accurately describe the manner in which HNS operated on EDGA. From at least July 2010 to the present, a HNS order on EDGA that would lock or cross a protected quotation is displayed one minimum price variation away from the original locking price but is executable, ranked and hidden at that locking price. If the NBBO changed as a result of an incoming ISO, such that the original locking price would no longer lock or cross a protected quote, the HNS order on EDGA that was already ranked/priced at the original locking price will be displayed/“unhid” and will receive a new time stamp. However, if the NBBO changed other than as a result of an incoming ISO order, the HNS order on EDGA, when displayed, will retain its original time stamp and thus its priority in the EDGA order book. The “displayed price sliding process” did not completely and accurately describe how an HNS order on EDGA operated because an HNS order that would lock or cross a protected quotation does not receive a new time stamp under circumstances other than when an incoming ISO order permits its display.

#### **Direct Edge Provided Detailed Information about Mid-Point Re-pricing and HNS Order Execution to Certain Members at Exchange Launch**

42. Direct Edge provided complete and accurate information about the operation of HNS and the benefits offered by that order type to some, but not all, of its members. For example, Trading Firm A and Trading Firm B were informed about the mid-point re-pricing, that HNS orders would have execution priority over MPM orders, and that a post-only order could execute as a taker of liquidity (and pay a taker fee) but receive price improvement in an amount that exceeded the loss of the rebate that it would have earned had it been posted before being executed.

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<sup>17</sup> An ISO is defined by Rule 600(b)(30) of Regulation NMS as a limit order for an NMS stock that is identified as an ISO and, simultaneously with its routing, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of an initial ISO to sell) or offer (in the case of an initial ISO to buy). 17 C.F.R. § 242.600(b)(30). ISOs also are an exception to Rule 611 of Regulation NMS (the “Order Protection Rule”). Rule 611 generally requires trading centers to have policies and procedures reasonably designed to prevent “trade-throughs.” 17 C.F.R. § 242.611(a). A trade-through is defined in Rule 600(b)(77) of Regulation NMS as an execution at a price that is lower than a protected bid or higher than a protected offer. 17 C.F.R. § 242.600(b)(77). Pursuant to Rule 611(b)(5), a trading center’s policies and procedures to prevent trade-throughs need not seek to prevent trade-throughs that result from the execution of an ISO. The principal supporting this exception is that the ISO is accompanied by other ISOs meant to execute against the full size of any existing protected quotations; accordingly, the concern that an execution traded through a better available protected quotation should not be present. A day ISO is an ISO order that, if not executed in full upon receipt, will rest on the order book—unless executed or cancelled—until the end of the day.

43. Similarly, in or about June 2010, another high frequency trading firm was provided with information about how a HNS order would be ranked, displayed and executed on EDGX, including that an incoming HNS order that was marked post only could execute at the mid-point of the NBBO and be charged a taker fee, even though it was marked post only. Direct Edge also provided information about these issues to some other market participants, who raised questions about the operation of the Exchanges.

44. The additional information that Direct Edge provided to these firms about the operation of HNS on EDGA and EDGX was not contained in the Exchanges' rules. Nor was it contained in any other document or communication made available to all members. For instance, Direct Edge's then-available technical specifications for both EDGA and EDGX stated that, if a HNS order locked or crossed an away market quotation at the time of entry, "the order will be hidden and ranked at the locking price, but will be displayed one [minimum price variation] away from the locking price. The displayed price will be adjusted to the ranked price as soon as market conditions permit." As noted above, with respect to EDGX, the specifications incorrectly stated that HNS orders were ranked at the locking price when, in fact, they were ranked at the midpoint of the NBBO and had discretion to execute to the locking price in certain circumstances. The specifications also failed to explain that a HNS post-only order could execute as a taker of liquidity if price improved on EDGX.<sup>18</sup> With respect to EDGA, the specifications failed to explain that in the absence of an incoming ISO order, a HNS order did not receive a new time stamp when displayed.

45. As a result of disclosing this information to some but not all members, Direct Edge caused some members to have information about Exchange order types and order handling procedures that other members did not have, including that HNS orders on EDGX were ranked at the midpoint of the NBBO and had priority over other orders ranked at the midpoint and that a HNS post-only order could execute as a taker of liquidity if price improved on EDGX.

**After Beginning to Operate as an Exchange, EDGX Made Other Changes to HNS that were Inconsistent with its Commission-Approved Rules**

46. For a short time period after EDGX began operating as an exchange, under certain circumstances, a later arriving limit order contra to a HNS order (on the other side of the market—for example, if the HNS order was to buy, the contra order was to sell) obtained execution priority over a previously entered limit order that was also contra to the HNS order. This resulted in the subsequently received sell order executing before a previously received sell order with the same limit price, contrary to the price/time priority principle. This situation arose when EDGX received a post-only HNS order at a price that would lock a protected quotation displayed on EDGX itself (as opposed to locking a protected quotation that appeared on another

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<sup>18</sup> On June 28, 2011, more than one year after the Commission approved the Exchanges' Form 1 registration applications, Direct Edge amended its FIX specifications to reflect that a HNS post-only order could execute as a taker of liquidity if price improved on EDGX, but the specification still did not describe the circumstances under which this could occur. Direct Edge did not again modify the description of HNS in its FIX specifications until July 24, 2014.

exchange, other than EDGX). The post-only attribute of the HNS order prevented an immediate execution against a resting contra-side order, but EDGX permitted the HNS order to post to the order book and execute against a subsequently received contra-side order at the same price as the protected quotation.<sup>19</sup>

47. On September 2, 2010, to address a complaint from certain members that some orders that were eligible to execute as takers of liquidity appeared to jump over orders that already had been received at EDGX and had the same price, Direct Edge modified the operation of HNS on EDGX.

48. EDGX altered its order handling logic such that if the locking price is displayed on EDGX (as opposed to another trading center), a HNS order's discretion to execute up to the locking price will be suspended unless and until there is no contra-side displayed order on the EDGX book that equals the locking price.

49. EDGX did not submit a proposed rule change to amend its rules to include the HNS order type or to reflect this modification to the operation of HNS.

**EDGX and EDGA Did Not Include “Price Adjust” and “Single Re-Price” Price Sliding Order Types in their Rules**

50. According to EDGA's and EDGX's rules, the “displayed price sliding process” was the default process on both Exchanges, and a member had to affirmatively enter instructions not to use it. However, as discussed in more detail below, a price-sliding functionality called Price Adjust has been the default price sliding functionality on EDGX since October 2010. Price Adjust is comparable to the default price sliding that existed on the Direct Edge ECNs, but it was not included in the Exchanges' rules filed with the Commission.

51. Since at least July 2010, both EDGX and EDGA have had a price-sliding functionality described as Price Adjust. With Price Adjust, an order that locks or crosses the NBBO will be displayed and ranked/re-priced one minimum price variation away from the locking price and then, if the NBBO changes such that the original locking price would no longer lock or cross a protected quotation, it will be re-priced, re-ranked, and displayed to the original locking price with a new time stamp.

52. The proposed rules for EDGA and EDGX submitted to the Commission with Direct Edge's Form 1 applications did not provide for Price Adjust-type price sliding.

53. The Price Adjust order functionality operates differently than the “displayed price sliding process” set forth in the Exchanges' rules because a Price Adjust order is ranked/re-

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<sup>19</sup> For example, if a HNS post-only order to buy, with an \$8.00 limit price, arrived after a displayed limit order to sell with an \$8.00 limit price was already on EDGX's order book, the HNS post-only order to buy would not execute against the sell order because that would result in the HNS post-only order removing liquidity, which post-only orders generally cannot do. The HNS post-only order then would rest on EDGX's book. If a second order to sell arrived, also with an \$8.00 limit price, it would execute against the HNS post-only buy order, and the HNS post-only order would receive a rebate.

priced to one minimum price variation *away from the locking price*, thus having a lower order book priority than an order subjected to the “displayed price sliding process.” In contrast, under the Exchanges’ rules, an order that would cross a protected quotation at the time of entry would “be repriced *to the locking price* and ranked at such price” (emphasis added). The Exchanges’ rules do not state that an order subject to the “displayed price sliding process” will be repriced/ranked *to one minimum price variation away from the locking price*.

54. From at least July 2010 through late 2014, EDGA and EDGX had another price-sliding functionality, known as Single Re-Price, that Direct Edge also did not include in the Exchanges’ rules.<sup>20</sup> If at the time of entry, a Single Re-Price order locked or crossed a protected quotation, it was displayed and ranked one minimum price variation away from the locking price in a one-time re-pricing of the order, and would not be unslid. As discussed above, the Exchanges’ rules did not state that an order subject to the “displayed price sliding process” would be repriced/ranked to one minimum price variation away from the locking price. The Exchanges’ rules also provided that, in the event the NBBO changed, “the order will receive a new timestamp and will be displayed at the original locking price.” However, a Single Re-Price order was not unslid and displayed at the original locking price.

#### **EDGA and EDGX Changed the Price Sliding Default Settings without Filing Proposed Rule Changes with the Commission**

55. As discussed above, the rules that EDGA and EDGX filed and that the Commission found consistent with Section 6 of the Exchange Act provided that the “displayed price sliding process” is the default on the Exchanges.

56. After EDGA and EDGX began operating as registered exchanges, Direct Edge modified the default settings for price sliding on both Exchanges without filing proposed rule changes with the Commission.

57. During the period when EDGA and EDGX operated as ECNs, the Price Adjust order functionality was the default setting. Accordingly, from May 2009 until they began operating as exchanges, a member had to affirmatively designate its order as HNS in order to bypass the default price sliding procedure on the EDGA and EDGX ECNs.

58. At the time they started operating as Exchanges in July 2010, the default functionality on EDGA and EDGX was changed from Price Adjust to HNS. Accordingly, a

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<sup>20</sup> The Exchanges included a description of the Price Adjust and Single Re-Price functionalities in their publicly-available FIX specifications. The technical specifications described the “Price Adjust” functionality as follows: “If at the time of entry an order locks or crosses an away market quotation, the order will be displayed and ranked one penny away from the locking price. If market conditions allow the order to be displayed at the original locking price, it will be moved to that price.” The technical specifications described Single Re-Price functionality as follows: “If at the time of entry, an order locks or crosses an away market quotation, it will be displayed and ranked one penny away from the locking price. This is a one-time re-pricing of the order.”

member did not have to affirmatively designate its order as HNS in order to maintain the order's priority position in the Exchanges' order book.

59. In October 2010, Direct Edge switched the default on EDGA and EDGX back to Price Adjust. The next month, in November 2010, Direct Edge again changed the default on EDGA only, this time reverting to HNS. Since October 2010, the default on EDGX has been and remains Price Adjust, and since November 2010, the default on EDGA has been and remains HNS.

60. By changing the default price-sliding functionality on EDGX to Price Adjust, Direct Edge subjected members on EDGX who were unfamiliar with HNS to a price sliding functionality that resulted in their orders not being eligible for mid-point execution or the book priority that resulted when the orders were subsequently displayed at the original locking price.

61. Direct Edge's rules included statements about default settings that were inaccurate. In addition, Direct Edge did not file proposed rule changes to reflect the changes to the default settings that it had described in its rules.

62. Direct Edge updated its publicly-available FIX specifications to reflect the changes to the default price-sliding functionality. However, Direct Edge also took steps to inform certain members about the significance of the changes to the default price sliding functionalities. In October 2010, before it made the default change on EDGX, Direct Edge informed some members that it would be changing the default on EDGX from HNS to Price Adjust. Direct Edge noted internally that significant order flow that was defaulting to HNS was coming from key high frequency trading firms, and that if those firms did not make a change to explicitly mark their orders HNS before EDGX changed the default, Direct Edge could unnecessarily lose substantial revenue. Direct Edge reached out to the affected firms, including Trading Firm A and Trading Firm B, to remind them that, with the change in the default back to Price Adjust, they would have to affirmatively tag their orders as HNS once again.

### **The Exchanges Did Not Operate Consistently with their Rules**

63. From the time they began operating as registered exchanges in July 2010, EDGA and EDGX operated in a manner that was inconsistent with their rules, which, among other things, did not completely and accurately describe the HNS, Price Adjust or Single Re-price order types or their underlying functionalities.

64. Beginning in July 2011, Direct Edge submitted to the Division of Trading and Markets several draft proposed rule changes that were in various stages of completion that included proposed changes to the "displayed price sliding process" reflected in its rules. The Exchanges could have filed proposed rule changes with the Commission, pursuant to Section 19(b) of the Exchange Act, at any time.



65. On July 11, 2014, Direct Edge submitted an EDGX rule filing for public comment and Commission approval that included the HNS, Price Adjust and Single Re-Price order types and that included a description of how they operate.<sup>21</sup> On August 1, 2014, Direct Edge submitted an EDGA rule filing for public comment and Commission approval that included the HNS, Price Adjust, and Single Re-price order types and that included a description of how they operate.<sup>22</sup> The Commission approved the EDGX rule filing on October 29, 2014 and the EDGA rule filing on November 13, 2014.<sup>23</sup>

#### **D. Violations**

##### **Section 19(b) (1) of the Exchange Act**

66. Section 19(b) of the Exchange Act requires an exchange to file with the Commission “any proposed rule or any proposed changes in, addition to, or deletion from” the rules of the SRO accompanied by a concise general statement of the basis and purpose of such proposed rule change. “Rules of an exchange” is defined in Section 3(a)(27) of the Exchange Act and “means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange . . . , and such of the stated policies, practices, and interpretations of such exchange . . . as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange . . . .”

67. Rule 19b-4 thereunder provides, in relevant part, that any “stated policy, practice, or interpretation” of an exchange shall be deemed a “proposed rule change” unless: (1) “it is reasonably and fairly implied by an existing rule” of the exchange; or (2) it is concerned solely with the administration of the SRO and “is not a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.” As defined in Rule 19b-4, the term “stated policy, practice, or interpretation” means: (1) any material aspect of the operation of the facilities of the SRO; or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access to the facilities of the SRO, or to a group or category of specified persons “that establishes or changes any standard, limit or guideline” with respect to: (a) the “rights, obligations, or privileges” of specified persons

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<sup>21</sup> Notice of Filing of Proposed Rule Change, Release No. 34-72676, File No. SR-EDGX-2014-18 (July 25, 2014) (available at <http://www.sec.gov/rules/sro/edgx/2014/34-72676.pdf>).

<sup>22</sup> Notice of Filing of Proposed Rule Change, Release No. 34-72812, File No. SR-EDGA-2014-20 (Aug. 11, 2014) (available at <http://www.sec.gov/rules/sro/edga/2014/34-72812.pdf>).

<sup>23</sup> Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, Release No. 34-73468, File No. SR-EDGX-2014-18 (Oct. 29, 2014) (available at <http://www.sec.gov/rules/sro/edgx/2014/34-73468.pdf>); Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, Release No. 34-73592, File No. SR-EDGA-2014-20 (available at <http://www.sec.gov/rules/sro/edga/2014/34-73592.pdf>). Prior to Commission approval, the Exchanges filed amendments to their rule filings to eliminate the Single Re-Price order type.

or persons associated with specified persons; or (b) the “meaning, administration or enforcement” of an existing rule.

68. An exchange must file a proposed rule change with the Commission on Form 19b-4. Following receipt of the proposed rule change, the Commission publishes it in the Federal Register to enable all interested parties to review and provide comment upon it. Section 19(b) provides that “[n]o proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.”

69. EDGA and EDGX violated Section 19(b)(1) of the Exchange Act by failing to file proposed rules and proposed rule changes that completely and accurately described how the HNS, Price Adjust, and Single Re-price order types operated and impacted order handling and trading on the Exchanges.

### **Section 19(g) (1) of the Exchange Act**

70. Section 19(g)(1) of the Exchange Act requires every exchange to comply with the provisions of the Exchange Act, the rules and regulations thereunder, and the exchange’s own rules.

71. EDGA and EDGX violated Section 19(g)(1) of the Exchange Act by not complying with their own rules when they offered and executed HNS, Price Adjust, and Single Re-price order types, which were not completely and accurately described in the rules approved by the Commission.

### **October 13, 2011 Commission Order**

72. On October 13, 2011, the Commission issued a settled Order Instituting Administrative and Cease-and-Desist Proceedings against EDGA and EDGX finding that they violated Sections 19(b) and 19(g) of the Exchange Act and that EDGX also violated Rule 602(a)(3) thereunder. The Commission ordered EDGA and EDGX to cease and desist from committing or causing any violations and any future violations of Sections 19(b) and 19(g) of the Exchange Act.

73. EDGA and EDGX violated the October 13, 2011 Commission Order by violating Sections 19(b) and 19(g) of the Exchange Act, as described above.

### **E. Findings**

74. Based on the foregoing, the Commission finds that Respondents violated Sections 19(b) and 19(g) of the Exchange Act.

### **F. Undertakings**

75. The Respondent Exchanges each have undertaken to do the following:

- A. Each Respondent Exchange shall take all necessary steps to ensure that its regulatory functions are independent from the commercial interests of the Respondent Exchange, including by providing sufficient resources and employing sufficient regulatory staff so that the Respondent Exchange can reasonably discharge its responsibilities as an SRO and ensure that the Respondent Exchange and its members comply with the federal securities laws and the Respondent Exchange's rules.
  
- B. Each Respondent Exchange shall, no later than thirty (30) days from the issuance of this Order, create and implement written policies and procedures relating to the development of order types, the rule filing process for order types, and the communication of information regarding order types to members. The policies and procedures shall require that each Respondent Exchange:
  - i. Evaluate new order type proposals to ensure fairness in the Respondent Exchange's dealings with members and to ensure appropriate consideration of a proposed order type's potential impact, including the following:
    - a. document the source of and reason for a proposed order type;
    - b. designate the point person or group responsible for identifying and evaluating a proposed order type;
    - c. determine a proposed order type's projected usage, regulatory impact, market impact, system impact, and resource commitment; and
    - d. evaluate whether the proposed order type is consistent with the Respondent Exchange's obligations as an SRO as well as the requirements of Section 19(b) of the Exchange Act.
  - ii. Ensure appropriate oversight in the order type rule filing process, including the following:
    - a. document the process for filing order type rules with the Commission; and
    - b. document the degree of the Board of Director's or a committee's involvement in the approval of order type rule filings and the circumstances under which certain Exchange staff have delegated authority to approve the filing of order type rules or rule changes.
  - iii. Supervise and monitor communications with members and the public about order types to ensure that the Respondent Exchange staff

provide the same information regarding the functionality of order types to all members and the public, including the following:

- a. document how, what, and when information about order types is communicated to members and the public, including how the Respondent Exchange targets certain types of communication to specific members; and
  - b. provide presentations or informational guides regarding the Respondent Exchange's order types on their public websites to describe how the order types function.
- C. Beginning one (1) year after the date of this Order, and continuing each year thereafter for two (2) years (for a total of three (3) years), each Respondent Exchange shall require its principal executive officer to certify, in writing, that the Respondent Exchange's rules identify and describe all order types, order handling procedures, and order type modifiers available on the Respondent Exchange as required under Section 19(b) of the Exchange Act as of the date of the certification.
- i. The initial certification required one year after the date of this Order shall provide written evidence of compliance with this Undertaking in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance.
  - ii. With respect to the additional certifications required two years and three years after the date of this Order, the certifications shall provide written evidence of compliance with this Undertaking by identifying, with reference to the prior year's certification, (i) any enhancements or alterations to the Respondent Exchange's order type management policies and procedures, (ii) any new order types or modifications to existing order types, order handling procedures, or order type modifiers available on the Respondent Exchange, and all rule filings associated therewith, and (iii) any operational changes that impacted the handling of order types on the Respondent Exchange.
  - iii. The certifications and supporting material required above shall be submitted to the Director of the Division of Enforcement, with copies to the Director of the Office of Compliance Inspections and Examinations ("OCIE") and to the Director of the Division of Trading and Markets. Commission staff may make reasonable requests for further evidence of compliance, and each Respondent Exchange agrees to provide such evidence.
- D. In the event that the Commission determines that a Respondent Exchange's rules do not identify and describe all order types, order handling procedures,

and order type modifiers available on the Respondent Exchange as required under Section 19(b) of the Exchange Act, the Commission may, at any time within three (3) years of the date of this Order, in the Commission's sole discretion and not subject to judicial review, require the Respondent Exchange to retain at its expense a qualified independent consultant (the "Order Type Consultant") not unacceptable to the staff of the Commission to conduct a comprehensive review of the Respondent Exchange's rules to determine whether they accurately identify and describe all existing order types, order handling procedures, and order type modifiers available on the Respondent Exchange in operation since the date of this Order (the "Order Type Compliance Review").

- i. The Order Type Compliance Review should assure that each Exchange's rulebook fully describes the characteristics of the order type (*e.g.*, price, display, routable, provide liquidity only); the functionality of the order type (*e.g.*, how and when it interacts or does not interact with other order types, in the full range of potential order book and execution scenarios); the relative priority of the order type vis-à-vis other order types, in the full range of potential order book and execution scenarios; and the way in which an execution of the order type will be priced, in the full range of potential execution scenarios. To the extent the order type behaves differently under certain scenarios, the rulebook must describe each of these variations;
- ii. The Respondent Exchange shall provide a copy of the engagement letter detailing the Order Type Consultant's responsibilities to the staff of the Division of Enforcement. The Respondent Exchange may in the course of the Order Type Consultant's engagement provide the Order Type Consultant with the views of the Respondent Exchange, and the management and Board of Directors of the Respondent Exchange;
- iii. The Respondent Exchange shall require the Order Type Consultant, within six (6) months of the Order Type Consultant's engagement, to submit a report of his/her findings and recommendations (the "Order Type Consultant's Report") simultaneously to the Board of Directors of the Respondent Exchange and to the Director of the Division of Enforcement, with copies to the Director of OCIE and to the Director of the Division of Trading and Markets, that sets forth the Order Type Consultant's findings in connection with the Order Type Compliance Review;
- iv. Within 60 days of the Order Type Consultant's Report, the Respondent Exchange shall submit proposed rule changes to the Commission, in accordance with Section 19(b) of the Exchange Act, with respect to any order type, order handling procedure, and/or order type modifier that the

Order Type Consultant determined was not accurately identified or described in the Respondent Exchange's existing rules;

- v. If the Respondent Exchange determines that it is not necessary to file a proposed rule change with the Commission with respect to any order type, order handling procedure, or order type modifier as required by paragraph 75.D.iv, the Respondent Exchange shall provide written notice, within 60 days of the issuance of the Order Type Consultant's Report, to the Director of the Division of Enforcement, with copies to the Director of OCIE and to the Director of the Division of Trading and Markets, setting forth an explanation of the reasons for the Respondent Exchange's determination;
- vi. The Respondent Exchange shall cooperate fully with the Order Type Consultant, including providing the Order Type Consultant with access to the files, books, records, and personnel of the Respondent Exchange (and the Respondent Exchange's relevant affiliated entities) as reasonably requested for the Order Type Compliance Review, and obtaining the cooperation of employees or other persons under the Respondent Exchange's control. Nothing in the foregoing shall be deemed to require the Respondent Exchange to waive their attorney-client privileges or other privileges with respect to privileged documents;
- vii. The Respondent Exchange shall require the Order Type Consultant to report to Commission staff in the Divisions of Enforcement and Trading and Markets and OCIE on his/her activities as the staff may reasonably request;
- viii. To ensure the independence of the Order Type Consultant, the Respondent Exchange shall not have the authority to terminate the Order Type Consultant without prior written approval of the staff of the Division of Enforcement and shall compensate the Order Type Consultant and persons engaged to assist the Order Type Consultant for services rendered pursuant to this Order at their reasonable and customary rates;
- ix. The Respondent Exchange shall expend sufficient funds to permit the Order Type Consultant to discharge all of his/her duties. The Respondent Exchange shall permit the Order Type Consultant to engage such assistance, clerical, legal or expert, as necessary and at a reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by the Respondent Exchange;

- x. The Respondent Exchange shall bear the full expense of carrying out these undertakings, including the costs of retaining the Order Type Consultant and implementing the Order Type Consultant's recommendations;
- xi. The Respondent Exchange shall require the Order Type Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Order Type Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Exchanges, BATS, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Order Type Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Order Type Consultant in performance of his/her duties under this Order shall not, without prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Exchanges, BATS, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement. The agreement will also provide that the Order Type Consultant shall maintain the confidentiality of any confidential information of the Respondent Exchange and/or its affiliates; and
- xii. The Respondent Exchange may apply to the staff of the Division of Enforcement for an extension of the deadlines described above before their expiration and, upon a showing of good cause by the Respondent Exchange, the staff of the Division of Enforcement may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 19(h)(1) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. EDGA and EDGX shall cease and desist from committing or causing any violations and future violations of Sections 19(b) and 19(g) of the Exchange Act.
- B. EDGA and EDGX are censured.

C. EDGA and EDGX shall pay, jointly and severally, within ten (10) days of the entry of this Order, a civil money penalty in the amount of \$14 million to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways: (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying EDGA and EDGX as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel M. Hawke, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 John F. Kennedy Blvd., Suite 520, Philadelphia, PA, 19103-1844.

D. Respondents shall comply with the undertakings enumerated above.

By the Commission.

Brent J. Fields  
Secretary