U.S.C. 3642(b) is unnecessary here because of the Commission findings in Order No. 43 that Negotiated Service Agreements for outbound International Mail are classified as competitive. Further, it asserts that the instant MC docket (MC2010–26) is merely a technicality “and does not involve a substantively new product requiring fresh review.” Id. at 8.

The Postal Service contends that its filings demonstrate that the instant contracts comply with the requirements of 39 U.S.C. 3633, fit within the Mail Classification Schedule language for Global Plus 1 Contracts and are functionally equivalent to each other. Id. at 9. It urges the Commission to add Global Plus 1A Contracts to the competitive product list. Id.

II. Notice of Filing


Interested persons may submit comments on whether the Postal Service’s filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than July 26, 2010. The public portions of these filings can be accessed via the Commission’s Web site (http://www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:


2. Comments by interested persons in these proceedings are due no later than July 26, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the Federal Register.

By the Commission.

Shoshana M. Grove
Secretary.
[FR Doc. 2010–18163 Filed 7–23–10; 8:45 am]
the corporate governing documents of DEI, DE Holdings, and the Exchange are designed to protect and maintain the integrity of the self-regulatory functions of the Exchange and to facilitate the ability of the Exchange and the Commission to carry out their regulatory and oversight obligations under the Act. Finally, the Commission finds that the proposal is consistent with the requirement under Section 6(b)(3) of the Act that the rules of an exchange assure fair representation of the exchange’s members in the selection of its directors and administration of its affairs.

A. DEI

Following the Corporate Reorganization, DEI will be the sole stockholder of the Exchange. Although DEI will not carry out any regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and must not interfere with, the self-regulatory obligations of the Exchange. The DEI Certificate and DEI Bylaws include certain provisions that are designed to maintain the independence of the Exchange’s self-regulatory function from DEI, enable the Exchange to operate in a manner that complies with the Federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.

For example, DEI submits to the jurisdiction of the Commission and the Exchange with respect to activities relating to the Exchange, and agrees to provide the Commission and the Exchange with access to its books and records that are related to the operation or administration of the Exchange. In addition, to the extent they are related to the operation or administration of the Exchange, the books, records, premises, officers, directors, agents, and employees of DEI will be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for the purpose of, and subject to oversight pursuant to, the Act. DEI also agrees to keep confidential non-public information relating to the self-regulatory function of the Exchange and not to use such information for any non-regulatory purpose. In addition, the Board of Directors of DEI, and DEI’s officers, employees, and agents, are required to give due regard to the preservation of the independence of the self-regulatory function of the Exchange.

Article VII, Section 7.7 of the DE Holdings Operating Agreement requires the approval of the DE Holdings Board of Managers and/or Members of DE Holdings in connection with certain actions taken by DE Holdings or a subsidiary of DE Holdings. Article SIXTH of the DEI Certificate states that any action that specifically requires the approval of the DE Holdings Board of Managers and/or Members of DE Holdings pursuant to Article VII, Section 7.7 of the DE Holdings Operating Agreement will require the approval of the stockholders of DEI. Further, Article SIXTH of the DEI Certificate further provides, however, that nothing contained in Article VII, Section 7.7 of the DE Holdings Operating Agreement will be applicable where the application of that provision would interfere with the effectuation of any decisions of the DEI Board of Directors (“DEI Board”) relating to regulatory functions of the Exchange (including disciplinary matters) or the structure of the market the Exchange regulates, or would interfere with the ability of the Exchange to carry out its responsibilities under the Act or to oversee the structure of the market the Exchange regulates.

For as long as DEI directly or indirectly controls the Exchange, any change to the DEI Certificate must be submitted to the Exchange’s Board of Directors (“Exchange Board”) and, if the amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, the change will not be effective until filed with, or filed with and approved by, the Commission.

The Commission finds that these provisions in the DEI Bylaws and DEI Certificate are consistent with the Act, and that they will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

B. DE Holdings

In the Corporate Reorganization, DE Holdings, which currently is the sole stockholder of the Exchange, will transfer its stock in the Exchange to DE Holdings’ wholly-owned subsidiary, DEI, which will become the sole stockholder of the Exchange. Accordingly, DE Holdings will be an indirect owner of the Exchange following the Corporate Reorganization. Although DE Holdings will not carry out any regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the self-regulatory obligations of the Exchange.

The DE Holdings Operating Agreement, which the Commission reviewed in connection with the Exchange’s application for registration as a national securities exchange, includes certain provisions that are designed to maintain the independence of the Exchange’s self-regulatory function from DE Holdings, enable the Exchange to operate in a manner that complies with the Federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. For example, the DE Holdings Operating Agreement provides that, for so long as DE Holdings directly or indirectly controls the Exchange, the Managers, officers, employees, and agents of DE Holdings shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and shall not take any actions that would interfere with the effectuation of any decisions by the Exchange Board relating to the Exchange’s regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act.

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13 See DEI Bylaws, Article VII, Section 7.3.
14 See DEI Bylaws, Article V, Section 5.8(b).
15 DEI Bylaws, Article V, Section 5.8(a).
16 Id.
17 This requirement to keep confidential non-public information relating to the self-regulatory function of the Exchange will not limit the Commission’s or the Exchange’s ability to access and examine such information or limit the ability of any officers, directors, agents, or employees of DEI to disclose such information to the Commission or to the Exchange. See DEI Bylaws, Article V, Section 5.8(a).
18 See DEI Bylaws, Article VII, Section 7.1.
19 See DEI Bylaws, Article V, Section 5.8(b).
20 See DEI Certificate, Article SIXTH(1).
21 See DEI Certificate, Article SIXTH(2).
22 See DEI Certificate, Article EIGHTH(3).
23 See Order, supra note 4.
24 See DE Holdings Operating Agreement Article XIV, Section 14.1. In addition, the DE Holdings Operating Agreement further specifies, among other things, that: (1) DE Holdings and its officers, Managers, employees, and agents submit to the Commission’s and the Exchange’s jurisdiction with respect to activities relating to the Exchange; (2) DE Holdings agrees to retain in confidence information in the books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including disciplinary matters, trading data, trading practices, and audit information) that comes into DE Holdings’ possession; (3) the books, records, premises, officers, Managers, agents, and employees of DE Holdings are deemed to be the books, records, premises, officers, Managers, agents, and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, to the extent that
The Commission notes that the Exchange is not proposing to amend the DE Holdings operating agreement. Accordingly, the DE Holdings operating agreement that the Commission reviewed in connection with the Exchange’s application for registration as a national securities exchange, including the provisions in the DE Holdings operating agreement relating to the self-regulatory function of the Exchange, will remain in place following the Corporate Reorganization.

C. Ownership and Control of the Exchange, DEI, and DE Holdings

Following the Corporate Reorganization, DEI will be the sole stockholder of the Exchange. The Exchange Bylaws identify this ownership structure. Any changes to the Exchange Bylaws, including any change in the provision that identifies DEI as the sole stockholder of the Exchange, must be filed with and approved by the Commission pursuant to Section 19(b)(2) of the Act. Similarly, the DEI Certificate identifies DE Holdings as the sole stockholder of DEI. For as long as DEI directly or indirectly controls the Exchange, any amendment to the DEI Certificate, including an amendment to the provision that identifies DE Holdings as the sole stockholder of DEI, must be submitted to the Exchange Board and, if the Exchange Board determines that the amendment must be filed with, or filed with and approved by the Commission, before the amendment may be effective under section 19 of the Act, then the proposed amendment will not be effective until it is filed with, or filed with and approved by, the Commission.

In addition, as discussed in greater detail in the Order, the DE Holdings operating agreement includes restrictions on the ability to own and vote the capital stock of DE Holdings. These limitations apply for so long as DE Holdings directly or indirectly controls the Exchange. The limitations, which are designed to prevent any member of DE Holdings from exercising undue control over the operation of the Exchange and to assure that the Exchange and the Commission are able to effectively carry out their regulatory and oversight obligations under the Act, generally prohibit any person, other than International Securities Exchange Holdings, Inc., from owning interests representing more than 40% of DE Holdings or from voting interests representing more than 20% of DE Holdings. In addition, the limitations prohibit any member of the Exchange from owning interests representing more than 20% of DE Holdings.

The Commission believes that these provisions in the governing documents of the Exchange, DEI, and DE Holdings should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory and oversight responsibilities under the Act.

D. Electing Directors and Certain Committee Members of the Exchange

Currently, the DE Holdings operating agreement requires DE Holdings, in its capacity as the sole stockholder of the Exchange, to vote all of the outstanding equity of the Exchange owned by DE Holdings and entitled to vote in an election to be voted in favor of the election of (1) those directors nominated by the Nominating Committee of the Exchange ("Exchange Nominating Committee"); and (2) those nominees for the Exchange Nominating Committee and the Exchange Member Nominating Committee nominated in accordance with the governance documents of the Exchange. Because DE Holdings will no longer be a stockholder of the Exchange following the Corporate Reorganization, the Exchange notes that these requirements will no longer apply to DE Holdings.

However, the DEI Bylaws require DEI, in its capacity as the sole stockholder of the Exchange, to cause all outstanding equity of the Exchange owned by DEI and entitled to vote in an election to be voted in favor of the election of (1) those directors nominated by the Exchange Nominating Committee; and (2) those nominees for the Exchange Nominating Committee and the Exchange Member Nominating Committee nominated in accordance with the governance documents of the Exchange. Through these requirements in the DEI Bylaws, the Commission believes that the same procedures governing the election of Exchange directors and Exchange member directors that the Commission approved in the Order will continue to apply following the Corporate Reorganization. Accordingly, the Commission finds that the proposal is consistent with the requirement in section 6(b)(3) of the Act that the rules of the Exchange provide for the fair representation of its members in the selection of directors and the administration of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change [File No. SR–EDGA–2010–02] is approved.

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

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010–18157 Filed 7–23–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; EDGX Exchange, Inc; Order Approving a Proposed Rule Change Relating to Direct Edge, Inc.


I. Introduction

On June 3, 2010, EDGX Exchange, Inc. ("EDGX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 1 and Rule 19b–4

25 See DEI Bylaws, Article I(kk).
26 See Exchange Bylaws, Article XV, Section 15.2(b).
27 See also Order, supra note 4, at notes 49 and accompanying text.
28 See Exchange Bylaws, Article VIII.
29 See DEI Certificate, Article VIII.
30 See DEI Certificate, Article VIII.
31 See DEI Certificate, Article IX.
32 See DEI Certificate, Article IX.
33 See DEI Certificate, Article IX.
34 See DEI Bylaws, Article XII.
35 See Order, supra note 4, at notes 94–120 and accompanying text, for a discussion of the Exchange’s procedures for nominating directors and Exchange member directors.