

governance structures that warrant common treatment of UPREITs for fee cap purposes.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-43 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-NYSE-2012-43. This file

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2012-43 and should be submitted on or before October 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67844; File No. SR-NYSEArca-2012-75]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending NYSE Arca Equities Rule 7.37(c) to Provide That the Tracking Order Process Is Available Only for Orders That Are Eligible To Route To an Away Market

September 12, 2012.

#### I. Introduction

On July 11, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 to amend NYSE Arca Equities Rule 7.37(c) to provide that the Tracking Order Process is available only for orders that are eligible to route to an away market. The proposed rule change was published for comment in the **Federal Register** on July 30, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 7.37(c) to specify that only orders that are eligible to route to an away market would participate in the Tracking Order Process. This proposed rule change would make Rule 7.37(c) consistent with the manner by which the Exchange operates the Tracking Order Process.

NYSE Arca Equities Rule 7.37 sets forth the Order Execution process at the Exchange. The Tracking Order Process is the fourth step in the Order Execution process, and is preceded by the Directed Order Process, Display Order Process and Working Order Process.<sup>4</sup> Currently, Rule 7.37(c) states that if an order has not been executed in its entirety in one of the processes preceding the Tracking Order Process, such order will enter the Tracking Order Process for potential matching and execution against Tracking Orders.<sup>5</sup> Rule 7.37(c) does not specify that among the orders that are not fully executed in the processes preceding the Tracking Order Process, it is only those that are eligible to route to an away market that participate in the Tracking Order Process. The proposed rule change would add this specification to Rule 7.37(c) to make the rule consistent with the operation of the Tracking Order Process.

The Exchange also proposes to delete provisions in current rule 7.37(c) stating that any portion of an order received from another market center or market participant is cancelled immediately, and an incoming order that is designated as an ISO does not interact in the Tracking Order Process.

<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. 67490 (July 24, 2012), 77 FR 44702 ("Notice").

<sup>4</sup> See NYSE Arca Equities Rule 7.37.

<sup>5</sup> Tracking Orders are undisplayed, priced round lot orders that are eligible for execution in the Tracking Order Process against orders equal to or less than the aggregate size of the Tracking Order interest at that price. See NYSE Arca Equities Rule 7.31(f).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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

According to the Exchange, these provisions are obviated by the proposed clarification in Rule 7.37(c) that only routable order types participate in the Tracking Order Process.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission notes that the Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by providing transparency regarding the type of orders that are eligible to interact in the Tracking Order Process and eliminating obsolete rule text. Based on the Exchange's statements, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.<sup>8</sup>

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2012-75) be, and it hereby is, approved.

<sup>6</sup>In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>8</sup>The Commission notes that it recently approved a proposal by EDGA Exchange, Inc. to add a new order type called the Route Peg Order, which is a non-displayed limit order that, similar to the Tracking Order, is eligible to execute against only routable orders. See Securities Exchange Act Release No. 67726 (August 24, 2012), 77 FR 52771 (August 30, 2012) (SR-EDGA-2012-28).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67839; File No. SR-EDGA-2012-41]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

September 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 5, 2012 the EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>, at the Exchange's principal office, and at the Public Reference Room of the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

The Exchange proposes to add Flag RP to the Exchange's fee schedule for Non-Displayed Orders that add liquidity using the Route Peg Order type.<sup>4</sup> The Exchange proposes to assess a charge of \$0.0005 per share for orders that yield Flag RP. The volume associated with Flag RP will also count towards the volume tiers for non-displayed orders that add liquidity.

As defined in Exchange Rule 11.5(c)(14), a Route Peg Order is a non-displayed limit order that posts to the EDGA Book, and thereafter is eligible for execution at the National Best Bid ("NBB") for buy orders and National Best Offer ("NBO"), and together with the NBB, the "NBBO") for sell orders against the original size of the routable orders that are equal to or less than the original size of the Route Peg Orders. Route Peg Orders are passive, resting orders on the EDGA Book and do not take liquidity. Route Peg Orders may be entered, cancelled, and cancelled/replaced prior to and during Regular Trading Hours.<sup>5</sup> Route Peg Orders are eligible for execution in a given security during Regular Trading Hours, except that, even after the commencement of Regular Trading Hours, Route Peg Orders are not eligible for execution (1) in the opening cross, and (2) until such time that regular session orders in that security can be posted to the EDGA Book. A Route Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not permitted to execute if the NBBO is locked or crossed. Any and all remaining, unexecuted Route Peg Orders are cancelled at the conclusion of Regular Trading Hours.

The Exchange also proposes to amend the text of Footnote 2 of the fee schedule to list Flag RP as one of the non-displayed order types where the volume associated with Flag RP will count toward the volume threshold in Footnote 2.

The Exchange proposes to implement these amendments to its fee schedule on September 7, 2012.

<sup>4</sup> See Securities and Exchange Act Release No. 67726 (August 24, 2012) (SR-EDGA-2012-28).

<sup>5</sup> As defined in Rule 1.5(y).

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

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

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

<sup>3</sup> As defined in Rule 1.5(n).