

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 -81278; File No. SR-IEX-2017-24)

August 1, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Policy Relating to its Treatment of Trade Reports that it Determines to be Inconsistent with the Prevailing Market

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 18, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CRF 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷ The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 statement 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

Trades in listed securities occasionally occur at prices that deviate from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security. The Consolidated Tape Association ("CTA") Plan and the Nasdaq UTP Plan ("UTP Plan") each offer participants in such plans with the discretion to append an Aberrant Report Indicator to a trade report to indicate that the market believes that the trade price of a particular trade executed on the participant's market does not accurately reflect the prevailing market for the security in question.⁸ The New York Stock Exchange ("NYSE"), Nasdaq Stock Market ("Nasdaq") and several other national securities exchanges have adopted policies related to use of the Aberrant Report Indicator for equities trades that,

⁷ 17 CFR 240.19b-4.

⁸ The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

while not eligible for cancellation pursuant to applicable exchange rules governing clearly erroneous executions, are determined not to accurately reflect the prevailing market for the security in question.⁹ The Exchange believes that such policies are appropriate in order to identify such trades to vendors and market participants so that they may exclude such trades from relevant pricing metrics (e.g., high, low and last sale prices). Accordingly, IEX is proposing to adopt a policy substantially similar to the existing policies of such other national securities exchanges as described below.¹⁰

During the course of surveillance by the Exchange or as a result of notification by another market, listed company,¹¹ or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange will contact the listing exchange (if the Exchange is not the listing exchange) and other markets (in the case of executions that take place across multiple markets) to seek consensus as to whether the trade price is consistent with the prevailing market for the security. If the Exchange determines that the trade price is inconsistent with the prevailing market for the security after considering the factors discussed below, the Exchange will append an Aberrant Report Indicator to the trade pursuant to applicable CTA and UTP procedures. Appending an Aberrant Report Indicator to the trade will have no effect on the validity of the underlying trade.

IEX currently trades securities on an unlisted trading privilege (“UTP”) basis, that are

⁹ See, e.g., Securities Exchange Act Release No. 59151 (December 23, 2008), 74 FR 158 (January 2, 2009) (SR-NASDAQ-2008-100) and Securities Exchange Act Release No. 58736 (October 6, 2008), 73 FR 60380 (October 10, 2008) (SR-NYSE-2008-91).

¹⁰ See note 9 *supra*.

¹¹ On June 17, 2016 the Commission granted IEX’s application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. (See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222)). The Exchange plans to begin a listing program in 2017.

listed on other exchanges. IEX also intends to become a primary listing exchange. The proposed policy would be applicable to trades that occur on IEX, whether traded on a UTP basis or listed on IEX.

In making the determination to append the Aberrant Report Indicator to a particular trade, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that its policy shall be to follow the following general guidelines: The Exchange will review whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (i.e., 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the “Reference Price” by an amount that meets or exceeds the following thresholds:

<u>Trade Price</u>	<u>Numerical Threshold (percent)</u>
Between \$0 and \$15.00	7 Percent
Between \$15.01 and \$50.00	5 Percent
In excess of \$50.00	3 Percent

The “Reference Price” refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If IEX determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade’s designation as the last sale and the preceding last sale eligible trade would become the new last sale. IEX may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

In connection with the proposed policy, IEX shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security; and will urge vendors to

disclose the exclusion from high, low or last sale price data of any trades with an Aberrant Report Indicator and exclude them from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy.¹²

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹³ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ in particular, in that it is 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.

In particular, and as described in rule change proposals of NYSE, Nasdaq and other national securities exchanges to adopt a policy on the use of the Aberrant Report Indicator, the Exchange believes that the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) once the Exchange's listing program begins, informing the affected listed company each time the

¹² Once its listing program begins, the Exchange will advise each listed company of the aberrant trade policy, including that any trade for which the Aberrant report Indicator is applied will remain a valid trade.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

Exchange or another market appends the Aberrant Report Indicator to an Exchange listed stock; and (iii) reminding the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

Additionally, the Exchange believes that the proposed rule change is a reasonable means to alert investors and others that the Exchange believes that the trade price for a particular trade executed in its market does not accurately reflect the prevailing market for the security. Further, the Exchange will use the same factors, including objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. As discussed in the Purpose Section and above, other national securities exchanges have adopted substantially similar policies. Accordingly, the proposed rule change does not raise any new or novel issues that have not already been considered by the Commission.

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

IEEX does not believe that the proposed rule change will result in any burden on competition. The proposed rule change is designed to enable the Exchange to apply the Aberrant Report Indicator in a manner consistent with its existing use by other national securities exchanges, thereby increasing transparency regarding trades executed at prices that do not reflect the prevailing market, and not to address any competitive issues. The Exchange will utilize the indicator in a consistent manner with respect to all Members and listed companies. The Exchange thus does not believe the proposal will burden competition because it will provide for consistency between the Exchange's policy related to use of the Aberrant Trade Indicator and those of other national securities exchanges.

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

Written comments were neither solicited nor received.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)¹⁵ of the Act and Rule 19b-4(f)(6)¹⁶ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange represents that waiver will allow it to append promptly, without the need to wait for the expiration of the 30-day operative delay period, an Aberrant Report Indicator to trades that occur that do not reflect the prevailing market, thereby avoiding confusion regarding pricing of those trades. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that IEX has represented that its proposal is substantially similar to the policies of other exchanges¹⁹ that are currently operative and therefore the proposal does not raise any new or novel issues that have not already been considered by the Commission.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ See note 9 supra.

Allowing IEX to attach Aberrant Report Indicators will therefore allow IEX to utilize the approach used by other exchanges to flag that information for investors, which should help protect investors by disclosing important information without delay for any such trades that occur on IEX. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing.²⁰

At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2017-24 on the subject line.

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2017-24. This file number should be included in 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 website (<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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, 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 inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).