

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78475; File No. SR-IEX-2016-05)

August 3, 2016

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 11.330 to Combine the TOPS and LAST Data Products and Make Minor Correcting and Conforming Changes to the Description of TOPS Viewer

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 28, 2016, 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 Securities and Exchange Commission (“Commission”) a proposed rule change to amend Rule 11.330 (Data Products) to (i) combine the TOPS and LAST data products to eliminate the LAST data product and add execution information to the TOPS data product, and (2) make minor correcting and conforming changes to the description of TOPS Viewer. The Exchange

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 CFR 240.19b-4.

has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

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 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 [sic] 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.330 (Data Products) to combine the TOPS and LAST data products, to eliminate the LAST data product, and to add execution information to the TOPS data product. Currently, Rule 11.330(a)(1) specifies that the TOPS data product is an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book, while paragraph (a)(3) specifies that the LAST data product is an uncompressed data feed that offers only execution information based on equities orders entered into the System (i.e. last sale information). IEX has determined to add the information contemplated to be provided in LAST into TOPS.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Exchange proposes to amend Rule 11.330(a)(1) to provide that TOPS is an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book and execution information for executions on the Exchange (i.e., last sale information). As proposed, TOPS will disseminate, on a real-time basis,⁷ (1) the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on IEX; and (2) the price, size, and time of execution for each transaction executed on IEX. For the sake of clarity, the Exchange also proposes to make certain non-substantive changes to the existing description of LAST as it is incorporated into the TOPS description. Specifically, rather than describe execution information as “based on equity orders entered into the System,” which technically could include executions on away exchanges of orders routed to such exchanges, the proposed text would clarify IEX includes execution information for orders executed on the Exchange. All information that will be provided in TOPS will also be reported under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. The Exchange will release information to TOPS and TOPS Viewer in compliance with Rule 603(a) of Regulation NMS, which requires that exchanges distribute market data on terms that are “fair and reasonable” and “not unreasonably discriminatory,” and prohibits an exchange from releasing data relating to quotes and trades to its customers through proprietary feeds before it sends its quotes and trade reports for inclusion in the consolidated feeds.⁸

The Exchange also proposes to make minor correcting and conforming changes to Rule 11.330(a)(2), which describes TOPS Viewer. Currently, as specified therein, TOPS Viewer is

⁷ Rule 11.510(b)(2) describes the application of the POP to outbound communications from the Exchange, which impacts TOPS. As specified therein, the POP “is designed to provide all Participants with an equivalent 350 microseconds of latency from the System at the primary data center to the Exchange-provided network interface at the IEX POP.”

⁸ See Regulation NMS, 70 Fed. Reg. 37,496, 37,567 (June 29, 2005) (adopting release); see also Concept Release, 75 Fed. Reg. at 3601 (January 21, 2010).

described as a data feed, currently available through the Exchange’s public website, that offers two-sided quotations for all displayed orders resting on the Order Book as well as the aggregate volume traded execution information based on orders entered into the System. TOPS and TOPS Viewer contain the same information, delivered in different manners. TOPS provides the specified information only through an application programming interface (“API”) via the POP (an API is by definition not human readable). TOPS Viewer provides the specified information in both a human readable format on the Exchange’s website as well as through an API from the Exchange’s website.

IEX proposes to make three minor changes to the description of TOPS Viewer in subparagraph (a)(2) of Rule 11.330. First, IEX proposes a ministerial change to conform the description of the quotation information available through TOPS Viewer, in subparagraph (a)(2) of the Rule, to the description set forth in the description of TOPS in subparagraph (a)(1). Second, IEX proposes a correcting change to delete the word “aggregate” in the description because information will be provided for each execution, rather than on an aggregated basis. Third, IEX proposes to include the clarifying language proposed to be added to subparagraph (a)(1) of the rule to make clear that the execution information provided is for transactions executed on the Exchange (i.e., last sale information).

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁹ in general, and with Section 6(b)(5) of the Act,¹⁰ in particular. TOPS and TOPS Viewer will be provided consistent with the purposes of Section 6(b)(5) of the Act.¹¹ Moreover,

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) [sic], (5).

¹¹ 15 U.S.C. 78f(b)(5).

the proposed rule change is not designed to permit unfair discrimination among customers, issuers, and brokers; and is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by providing quotation and transaction information to market participants. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing market participants with the option to receive such information otherwise than under the CTA and Nasdaq/UTP Plans.

Further, the proposal would not permit unfair discrimination because the information will be available to all market participants and market data vendors on an equivalent basis and without charge. In addition, any market participant that wishes to receive such information via the CTA and Nasdaq/UTP Plans will be able to do so. As noted above, the Exchange is simply proposing to include data elements contemplated to be included in LAST data product in TOPS, as well as to make minor correcting and conforming changes to the description of TOPS Viewer.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹² in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for

¹² 15 U.S.C. 78k-1.

and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹³ which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are fair and reasonable and not unreasonably discriminatory. As noted above, the Exchange will provide TOPS and TOPS Viewer to Members and other recipients of Exchange data on terms that are fair and reasonable and not unreasonably discriminatory in that TOPS and TOPS Viewer will be provided free of charge and TOPS Viewer is available to the public via the Exchange's website.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is not proposing to charge a fee for the TOPS feed, and will make the feed available to market participants on a fair and impartial basis, and on terms that are not unreasonably discriminatory.

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)¹⁴ of the Act and Rule 19b-4(f)(6)¹⁵ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any

¹³ See 17 CFR 242.603.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁶ The Exchange has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. The Exchange argues that the proposed rule filing merely combines the data elements from the LAST data product into TOPS and TOPS Viewer, and makes minor conforming and correcting changes to Rule 11.330. According to the Exchange, waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest, because it will allow the Exchange to implement the proposed rule change to coincide with IEX's launch of exchange operations during a security-by-security phase-in period beginning August 19, 2016, and thus provide operational simplification to Members and other recipients of Exchange data as well as a source of Exchange data free of charge otherwise than under the CTA and Nasdaq/UTP Plans, consistent with the protection of investors and the public interest. The Exchange further adds that waiver of the operative delay period will also enable the Exchange to make the minor correcting and clarifying changes described herein to coincide with IEX's launch of exchange operations.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal would merely consolidate existing data products and make minor, clarifying changes to the descriptions

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

of TOPS and TOPS Viewer. In the absence of a waiver of the operative delay, customers would have to subscribe to two data products to receive both top-of-book and last sale information when the Exchange begins operating on August 19, 2016, until the proposal becomes effective shortly thereafter. Waiving the operative delay would provide customers with the opportunity to receive a single, streamlined product with top-of-book and last sale information and would also provide customers with greater clarity about the content of the available products from the outset of the Exchange's launch of operations. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁷

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)¹⁸ 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

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2016-05 on the subject line.

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-2016-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 Room, 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 also will 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-2016-05 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.¹⁹

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).