

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79473; File No. SR-IEX-2016-17)

December 6, 2016

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Website Data Publication Requirements Relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program

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 November 21, 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) of 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 IEX Rule 11.340 to modify the website data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

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.

IEX has filed the proposed rule change for immediate effectiveness. IEX has requested that the SEC waive the 30-day operative period so that the proposed rule change may become operative upon filing.

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

On August 25, 2014, FINRA and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act⁶ and Rule 608 of Regulation NMS thereunder,⁷ the Plan to Implement a Tick Size Pilot Program.⁸ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁹

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608.

⁸ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁹ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.¹⁰ The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.¹¹ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.¹² Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. An amendment to the Plan adding IEX as a Participant was filed with the Commission on August 4, 20 [sic].¹³ On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.¹⁴

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

IEX adopted rule amendments to implement the requirements of the Plan, including

¹⁰ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

¹¹ See Approval Order at 27533 and 27545.

¹² See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

¹³ Securities Exchange Act Release No. 78702 (August 26, 2016). Pursuant to the terms of the plan, the amendment was effective on filing pursuant to Rule 608(b)(3) of the Act because it involves solely technical or ministerial matters.

¹⁴ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

relating to the Plan's data collection requirements and requirements relating to website data publication.¹⁵ Specifically, with respect to the website data publication requirements pursuant to Section VII and Appendix B to the Plan, IEX Rule 11.340(b)(2)(C) provides that IEX shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraphs (b)(2)(A) and (B) of Rule 11.340, publicly available on the IEX website on a monthly basis at no charge and shall not identify the Member that generated the data. IEX Rule 11.340(b)(3)(C), provides, among other things, that IEX shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) and (B) of Rule 11.340, publicly available on the IEX website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Supplementary Material .09 to IEX Rule 11.340 provides, among other things, that the requirement that IEX make certain data publicly available on the IEX website pursuant to Appendix B and Appendix C to the Plan shall commence at the beginning of the Pilot Period.

IEX is proposing amendments to Rule 11.340(b)(2)(C) (regarding Appendix B.I and B.II data) and Rule 11.340(b)(3)(C) (regarding Appendix B.IV data), to provide that data required to be made available on IEX's website be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .09 to Rule 11.340 would provide that, notwithstanding the provisions of paragraphs (b)(2)(C) and (b)(3)(C), IEX shall make data for the Pre-Pilot period publicly available on the IEX website pursuant to Appendix B

¹⁵ See, e.g., Securities Exchange Act Release No. 78820 (September 13, 2016), 81 FR 64234 (September 19, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-IEX-2016-13); see also Securities Exchange Act Release No. 78481 (August 4, 2016) 81 FR 52933 (August 10, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-IEX-2016-07); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Claudia Crowley, Chief Regulatory Officer, IEX, dated August 30, 2016.

to the Plan by February 28, 2017.¹⁶

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.

As noted in Item 1 of this filing, IEX has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹⁷ which requires, among other things, that IEX rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,¹⁸ which requires that IEX rules not impose any burden on competition that is not necessary or appropriate.

IEX believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance

¹⁶ With respect to data for the Pilot Period, the requirement that IEX make data publicly available on the IEX website pursuant to Appendix B to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the IEX website by February 28, 2017, which is 120 days following the end of October 2016. We note that FINRA has submitted a request for exemption, on behalf of all Plan Participants, requesting that the Commission grant an exemption from such provisions of the Plan. See, letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated November 14, 2016.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(8).

of the objectives of the Plan, as identified by the Commission. IEX believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting IEX to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

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. IEX notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting IEX to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. IEX notes that the proposed change will not affect the data reporting requirements of Members under IEX’s rules. The proposal also does not alter the information required to be submitted to the Commission.

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.¹⁹

¹⁹ Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

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

Because the foregoing 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)²⁰ of the Act and Rule 19b-4(f)(6)²¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and public availability of such information. The proposal does not alter the information required to be submitted to the Commission.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

²² Id.

²³ 17 CFR 240.19b-4(f)(6)(iii).

these proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on November 30, 2016.²⁴

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.²⁵ If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁶ 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-2016-17 on the subject line.

²⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(3)(C).

²⁶ 15 U.S.C. 78s(b)(2)(B).

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2016-17. 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 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at www.iextrading.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-IEX-2016-17 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.²⁷

Eduardo A. Aleman
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).