

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79652; File No. SR-IEX-2016-21)

December 21, 2016

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Require that an Issuer of Securities Listed under Chapter 16 Notify IEX about Certain Changes to the Index, Portfolio, or Reference Asset Underlying the Security

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 December 15, 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” or “SEC”) proposed rule changes to require that, among other things, an issuer of an ETP listed under Chapter 16 notify IEX about certain changes to the index, portfolio, or reference asset underlying the security. 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

IEX listing rules require issuers to notify IEX about substitution listing events. Specifically, Rule 14.002(a)(32) defines a "Substitution Listing Event"⁷ as certain changes in the equity or legal structure of a company and Rule 14.207(e)(4) requires a listed company to provide notification to IEX about these events no later than 15 days before implementation of the event. These events generally would require IEX to review the entity for compliance with the

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ A "Substitution Listing Event means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

applicable listing requirements.

IEX proposes to expand the definition of a Substitution Listing Event to include cases where an issuer of securities listed under Chapter 16 replaces, or significantly modifies, the index, portfolio, or reference asset underlying its security (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider). This type of change would require IEX to review the changes to the index, portfolio, or reference asset for compliance with the applicable listing requirements and may require IEX to make a rule filing with the Commission to continue listing the product with the revised index, portfolio, or reference asset.⁸

IEX believes it is appropriate to require notification of these changes in the same manner as other Substitution Listing Events,⁹ which will increase to 15 days the time available to IEX to conduct its initial review of the revised index, portfolio, or reference asset underlying the security, evaluate compliance with the listing requirements, and determine if a rule filing is required.¹⁰

IEX also proposes to modify Rule 16.101 to highlight that certain changes to the index, portfolio, or reference asset underlying a security is a Substitution Listing Event that requires 15 calendar days' notice. The new language also emphasizes that such a change may affect the

⁸ Other types of changes may also require IEX to make a rule filing with the Commission to continue listing the changed product.

⁹ Listed companies would be required to provide notification of a Substitution Listing Event by filing the appropriate form as designated by the Exchange. See Rule 14.207(e)(4).

¹⁰ Currently, at a minimum, IEX believes that an issuer must disclose such changes under Rule 14.207(b)(1), which requires public disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, and must notify the Exchange's Regulation Department at least 10 minutes prior to such announcement.

company's compliance with the listing requirements and may require IEX to file a new rule filing pursuant to Section 19(b)(1) of the Act¹¹ and for such rule filing to be approved by the SEC or otherwise take effect (as applicable), before the product can be listed or traded. The new rule language also indicates that IEX will halt trading if a company effectuates a change that requires such a filing before it is approved by the SEC or otherwise takes effect (as applicable). The new rule language would also indicate that IEX will commence delisting proceedings if a company effectuates a change in the case where IEX determines not to submit a rule filing or withdraws a rule filing, or where the SEC disapproves a rule filing.¹² The proposed rule changes are substantially identical to recent changes to Nasdaq Stock Market LLC ("Nasdaq") rules.¹³

The Exchange does not currently list any ETPs. The proposed rule changes would be applicable in the event IEX lists ETPs.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)¹⁴ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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

¹¹ 15 U.S.C. 78s(b)(1).

¹² The proposed rule change would also add language to Rule 16.101 to encourage companies to consult with IEX staff sufficiently in advance of such changes to allow review and preparation of a rule filing and SEC approval, if necessary, and to clarify that IEX has sole discretion as to whether it chooses to submit a rule filing and, if submitted, whether to withdraw such rule filing.

¹³ See Securities Exchange Act Release No. 77706 (April 26, 2016), 81 FR 26275 (May 2, 2016) (SR-NASDAQ-2016-059).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

IEX believes that the proposed requirement that an issuer of securities that would be listed under Chapter 16 notify IEX 15 calendar days in advance of certain changes to the index, portfolio, or reference asset underlying the security is consistent with the investor protection objectives of Section 6(b)(5) of the Act. Specifically, the proposed change will help to ensure that IEX has sufficient time to review the revised index, portfolio, or reference asset and determine whether the product complies with IEX's listing requirements and whether a rule filing must be filed by IEX pursuant to Section 19(b)(1) of the Act and approved by the Commission or otherwise take effect (as applicable), which will help protect investors. Similarly, the provisions that provide that IEX will (i) halt trading if a company effectuates a change that requires such a filing before it is approved by the SEC or otherwise takes effect (as applicable); and (ii) commence delisting proceedings if a company effectuates a change in the case where IEX determines not to submit a rule filing or withdraws a rule filing, or where the SEC disapproves a rule filing are consistent with the public interest and the protection of investors because they is [sic] designed to enable the Exchange to ensure that the necessary rule filings regarding IEX listed ETPs are approved or otherwise take effect (as applicable).

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 proposed rule change is not based on competitive factors, but rather is designed to ensure that IEX staff would have adequate time to review a change to an index, portfolio, or reference asset for compliance with the listing requirements and to file and obtain approval or

effectiveness of a rule change, if necessary. As such, the Exchange believes that the proposed change will have no impact on competition.

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

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 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

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 to determine whether the proposed rule change should be approved or disapproved.

¹⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2016-21 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-2016-21. 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-2016-21 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).