

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80905; File No. SR-IEX-2017-14)

June 12, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Continued Listing Standards for Exchange Traded Products

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 June 5, 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”), and Rule 19b-4 thereunder, Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to amend Chapter 16 of IEX Rules to add additional continued listing requirements for exchange traded products (“ETP”) listed under those rules, as well as a related amendment to IEX Rule 14.501 (Notification of Deficiency by IEX Regulation), and several clarifying and conforming changes to IEX Rules 14.101, 14.500, 14.501 and 14.505. The Exchange is also proposing various housekeeping changes throughout Chapter 16 for improved clarity. In addition, the Exchange is proposing to revise certain of the initial and continued listing standards applicable to Linked Securities and Index-Linked

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Exchangeable Notes in Rules 16.110 and 16.111 respectively. The Exchange 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. 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 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 Chapter 16 of IEX Rules to add additional continued listing standards for products listed under those rules (i.e., ETPs), as well as a related amendment to IEX Rule 14.501 (Notification of Deficiency by IEX Regulation), and several clarifying and conforming changes to IEX Rules 14.101, 14.500, 14.501 and 14.505. The Exchange is also proposing various housekeeping changes throughout Chapter 16 (e.g., punctuation, formatting, capitalization and renumbering) for improved clarity.

The Exchange does not currently list any ETPs.⁴ The proposed rule changes are based

⁴ In connection with IEX's Form 1 application for registration as a national securities exchange, the Commission approved rules applicable to the listing of ETPs on IEX. See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23,

on substantially identical Nasdaq Stock Market (“Nasdaq”) rule changes that were recently approved by the Commission, or that have become effective.⁵ The listing rules, as amended by this proposed rule change, will become operative no later than October 1, 2017.⁶

In Nasdaq’s recent Commission approved rule filing amending its ETP listing standards, Nasdaq noted that staff of the Commission’s Division of Trading and Markets (“DTM”) requested that Nasdaq adopt certain additional continued listing standards for ETPs, citing their concern for potential manipulation of ETPs.⁷ As a result, the Nasdaq rule change, as well as the Exchange’s rule changes proposed in this filing, reflect guidance provided by DTM that most initial listing standards, as well as certain representations included in Exchange rule filings under SEC Rule 19b-4⁸ to list an ETP (“Exchange Rule Filing”), are also considered continued listing standards. The Exchange Rule Filing representations that will also be required to be maintained on a continuous basis include: (a) the description of the fund; (b) the fund’s investment restrictions; and (c) the applicability of IEX listing rules specified in an Exchange Rule filing.

2016). These IEX rules are modelled on Nasdaq’s rules applicable to the listing of ETPs on Nasdaq, except that IEX rules do not provide for the listing of currency warrants, alpha index securities and NextShares. Additionally, the continued listing requirements applicable to Managed Fund Shares under IEX Rule 16.135 are included in SR-IEX-2017-03 (See, Securities Exchange Act Release No. 80545 (April 27, 2017), 82 FR 20648 (May 3, 2017)).

⁵ See, Securities Exchange Act Release No. 79784 (Jan. 12, 2017), 82 FR 6664 (January 19, 2017) (SR-NASDAQ-2016-135). See also, Securities Exchange Act Release No. 80210 (March 10, 2017), 82 FR 14094 (March 16, 2017) (SR-NASDAQ-2017-023). See also, SR-NASDAQ-2017-040 filed with the Commission on May 3, 2017 for effectiveness pursuant to Section 19b(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder.

⁶ The Exchange does not intend to list ETPs at this time or in the near future, but this date ensures the Exchange has sufficient time to meet its compliance obligations.

⁷ See, Securities Exchange Act Release No. 79784 (Jan. 12, 2017), 82 FR 6664 (January 19, 2017) (SR-NASDAQ-2016-135).

⁸ 17 CFR 240.19b-4.

The proposed rule changes would require that ETPs listed by the Exchange without an Exchange Rule Filing maintain the initial index or reference asset criteria on a continued basis. For example, in the case of a domestic equity index, these criteria generally include: (a) stocks with 90% of the weight of the index must have a minimum market value of at least \$75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the index, and the five most heavily weighted stocks cannot exceed 65%; (d) there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. There are similar criteria for international indexes, fixed-income indexes and indexes with a combination of components.

If an Exchange Rule Filing is made to list a specific ETP, the proposed rule change would require that the issuer of the security comply on a continuing basis with any statements or representations contained in the applicable rule proposal, including: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; and (c) the applicability of IEX listing rules specified in such Exchange Rule Filing.

As proposed, the Exchange would initiate delisting proceedings for a product listed under Chapter 16 if any of its continued listing requirements (including those set forth in an IEX rule and those set forth in an Exchange Rule Filing) are not continuously maintained.⁹

The continued listing rules are also proposed to be amended to modify ETP compliance with the minimum 50 beneficial holder requirement for continued listing (the “ETP Beneficial

⁹ Unlike failures to comply with other continued listing requirements, if there is an interruption to the dissemination of the reference asset, index, or intraday indicative values for a listed product, the Exchange would initiate delisting proceedings under the IEX Rule Series 14.500 only if the interruption persists past the trading day in which it occurred. See, e.g., proposed changes to Rules 16.105(a)(9)(B)(i)(d)–(e) and 16.105(b)(9)(B)(i)(d)–(e).

Holder Rule”). Specifically, the portion of the ETP Beneficial Holder Rule regarding when IEX would consider the suspension of trading following the initial twelve month period beginning upon the commencement of trading will be amended to delete the “30 or more consecutive trading days” requirement. IEX’s other shareholder tests in the listing rules do not prescribe minimum time frames for compliance and the Exchange believes that more frequent review is not necessary to provide meaningful assurances of liquidity or trading interest. This modification will conform the ETP Beneficial Holder Rule to the other shareholder tests in the listing rules and remove references to a requirement that necessitates daily monitoring of shareholders.

The IEX listing rules would also be modified to require that issuers of securities listed under Chapter 16 must notify the Exchange regarding instances of non-compliance. In addition, while any listed ETPs would be subject to the delisting process specified in IEX Rule Series 14.500, the rules would be clarified to make this explicit.¹⁰ Specifically, the Exchange proposes to make conforming and technical changes to Rules 14.500(a), 14.501(a) and (d), Supplementary Material .01 to Rule 14.501, and 14.505 to specify that the provisions therein relate to securities listed under Chapter 16 as well as Chapter 14, and to make several technical and conforming changes.

The Rule Series 14.500 would also be clarified to make explicit that in cases where IEX Regulation has notified an ETP that it is deficient under one or more listing standards, the ETP may submit a plan to regain compliance as set forth under the Exchange’s listing rules. In this regard, consistent with deficiencies from most other rules that allow issuers to submit a plan to regain compliance,¹¹ IEX proposes to allow issuers of ETPs 45 calendar days to submit such a

¹⁰ ETPs would also be subject to IEX Rule 11.280, which governs trading halts.

¹¹ Pursuant to Rule 14.501, a company is provided 45 days to submit a plan to regain compliance with Rules 14.408((c) (Quorum), 14.411 (Review of Related Party

plan. IEX staff will review the plan and may grant a limited period of time for the ETP to regain compliance as permitted under the listing rules. If IEX staff does not accept the plan, IEX staff would issue a Delisting Determination, which the company could appeal to the Listings Review Committee pursuant to Rule 14.502.

In addition, proposed amendments to Rule 14.101 would specify that the Exchange's broad discretionary authority over the initial and continued listing of securities on the Exchange also applies to securities listed under Chapter 16 as well as under Chapter 14.

Additionally, the Exchange proposes to make conforming and technical changes throughout Chapter 16 to maintain consistency in its rules. For example, the Exchange proposes to consistently use the language "initiate delisting proceedings under the IEX Rule Series 14.500" when describing the delisting process for a product that fails to meet continued listing requirements;¹² consistently state in the Portfolio Depository Receipts and Index Fund Shares rules that, if the index that underlies a series of Portfolio Depository Receipts or Index Fund Shares is maintained by a broker-dealer or fund advisor, the index shall be calculated by a third party who is not a broker-dealer or fund advisor;¹³ and consistently reflect that delisting

Transactions), 14.412 (Shareholder Approval), 14.207(c)(3) (Auditor Registration), 14.208(a) (Direct Registration Program), 14.406 (Code of Conduct), 14.407(a)(4)(E) (Quorum of Limited Partnerships), 14.407(a)(4)(G) (Related Party Transactions of Limited Partnerships), 14.413 (Voting Rights), or 14.414 (Internal Audit Function). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file reports contained in Rule 14.207(c)(1) or (2).

¹² See, e.g., proposed changes to Rules 16.105(a)(9)(B)(i) and 16.105(b)(9)(B)(i).

¹³ See proposed changes to Rules 16.105(a)(4)(B)(i), 16.105(a)(5)(A)(i), 16.105(b)(4)(B)(i), and 16.105(b)(5)(A)(i); see also Rule 16.105(a)(3)(B)(i) (currently stating that, for certain Portfolio Depository Receipts, "[i]f the index is maintained by a broker-dealer or fund advisor . . . the index shall be calculated by a third party who is not a broker-dealer or fund advisor") and 16.105(b)(3)(B)(i) (currently stating that, for certain Index Fund Shares, "[i]f the index is maintained by a broker-dealer or fund advisor . . . the index shall be calculated by a third party who is not a broker-dealer or fund advisor").

“following the initial 12-month period following commencement of trading on IEX only applies to the record/ beneficial holder, number of shares issued and outstanding, and the market value of shares issued and outstanding requirements.”¹⁴

Further, references in the Chapter 16 continued listing standards that state that if the requirements set forth in that particular section are not continuously maintained constitute a reason for IEX to consider the suspension of trading, covers only listing criteria that are explicitly considered continued listing standards for that rule.

Finally, the Exchange is proposing to revise certain of the initial and continued listing standards applicable to Linked Securities and Index-Linked Exchangeable Notes in Rules 16.110 and 16.111 respectively to conform to provisions in comparable Nasdaq rules.

Specifically, the Exchange proposes to amend paragraph (e) of Rule 16.110 (Securities Linked to the Performance of Indexes and Commodities (Including Currencies)), which allows the listing of Linked Securities. In addition to providing that the relevant provisions are considered continued as well as initial listing standards (as discussed above generally) the proposed rule change will modify the specific provisions of Rule 16.110(e) to reflect a substantially identical change previously made by Nasdaq to Nasdaq Rule 5710(e).¹⁵ Rule 16.110 states that for the listing of a Linked Security, the issuer will be expected to have a minimum tangible net worth in excess of \$250 million and income from continuing operations before income taxes of at least \$1,200,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years. As proposed, the income from continuing

¹⁴ See, e.g., proposed changes to Rule 16.111(d)(6)(B); see also, e.g., Rule 16.111(h)(4)(B)(i) (currently applying the 12-month threshold only to the record/beneficial holder, number of units issued and outstanding, and market value of units issued and outstanding requirements for Partnership Units).

¹⁵ See Securities Exchange Act Release No. 80348 (March 30, 2017), 82 FR 16651 (April 5, 2017 (SR-NASDAQ-2017-032)).

operations requirement would be deleted, and a parenthetical will be added following the existing minimum tangible net worth requirement to state that if the Linked Securities are fully and unconditionally guaranteed by an affiliate of the Company, IEX will rely on such affiliate's tangible net worth for purposes of this requirement. In addition, the Exchange proposes to add the following provisions that are substantively identical to provisions in Nasdaq Rule 5710(e). First, with respect to the alternative listing requirement, the original issue price of the Linked Securities, combined with all of the company's other Linked Securities listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25 percent of the company's tangible net worth at the time of issuance. Second, a parenthetical will be added following this provision to state that if the Linked Securities are fully and unconditionally guaranteed by an affiliate of the Company, IEX will apply the provisions of this paragraph to such affiliate instead of the Company and will include in its calculation all Linked Securities that are fully and unconditionally guaranteed by such affiliate. Third, as with the Nasdaq provision, a sentence at the end of this listing standard will state that Government issuers and supranational entities will be evaluated on a case-by-case basis.

With respect to Rule 16.111(a)(3) relating to the initial and continued listing standards applicable to Index-Linked Exchangeable Notes, the Exchange proposes to amend the rule to conform to current provisions of Nasdaq Rule 5711(a)(iii), as well as to provide that the relevant provisions are considered continued as well as initial listing standards (as discussed above generally). Currently, Rule 16.111(a)(3) provides for two alternative listing standards for Index-Linked Exchangeable Notes. Each alternative includes a requirement that the issuer of the Index-Linked Exchangeable Notes have annual income from continuing operations before income taxes of at least \$1,200,000 in the most recently completed fiscal year or in two of the

three most recently completed fiscal years. The Exchange proposes to replace each such requirement with a requirement that the issuer of the Index-Linked Exchangeable Notes have income from continuing operations before income taxes substantially exceeding \$1,000,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years. As proposed, this provision is substantially identical to corresponding provisions in Nasdaq Rule 5711(a)(iii).¹⁶

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)¹⁷ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ 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 open market and a national market system and, in general, to protect investors and the public interest. The Exchange notes that the changes proposed herein are substantially similar to Nasdaq rule changes approved by the Commission or that have become effective. IEX's listing rules for ETPs are also substantially similar to Nasdaq's listing rules for ETPs. Accordingly, the Exchange does not believe that the proposed rule change raises any new or novel issues and is consistent with the requirements of Section 6(b)(5) of the Act.

Specifically, the Exchange believes that the proposed rule changes accomplish these

¹⁶ In relevant part, Nasdaq Rule 5711(a)(iii) provides that the issuer will be expected to “substantially exceed the earnings requirements set forth in Nasdaq Rule 5405(b), which requires “[a]nnual income from continuing operations before income taxes of at least \$1,000,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.”

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

objectives by enhancing the current continued listing standards, as well as by clarifying that most initial listing standards, as well as certain representations included in Exchange Rule Filings to list an ETP, would be considered continued listing standards. In approving comparable Nasdaq changes to its continued listing standards for ETPs, the Commission found that the proposal is consistent with the Act, noting the importance of continued listing criteria to the maintenance of fair and orderly markets. Specifically, the Commission stated that the proposal is designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio underlying a listed ETP, provide transparency regarding the components of an index or portfolio underlying a listed ETP, ensure that there is adequate liquidity in a listed ETP itself, and provide timely and fair disclosure of useful information that may be necessary to price the listed ETP. Further, the Commission stated that the Nasdaq proposal would increase transparency regarding the process Nasdaq will follow if a listed product fails to meet its continued listing requirements. The Commission also stated that it does not believe Nasdaq's proposal raises any unique or novel regulatory issues.¹⁹ The Exchange believes that the same considerations support that the proposed rule change is consistent with the Act.

The continued listing rules will be amended to modify ETP compliance with the ETP Beneficial Holder Rule regarding when IEX would consider the suspension of trading following the initial twelve month period beginning upon commencement of trading by deleting the "30 or more consecutive trading days" requirement. The Exchange believes that this change serves 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 since it will conform

¹⁹ See generally, Securities Exchange Act Release No. 79784 (Jan. 12, 2017), 82 FR 6664 (January 19, 2017) (SR-NASDAQ-2016-135).

the ETP Beneficial Holder Rule with the other shareholder tests in the listing rules and the Exchange believes that more frequent review is not necessary to provide meaningful assurances of liquidity or trading interest.

Additionally, IEX listing rules will be modified to require that issuers of any securities to be listed under Chapter 16 must notify the Exchange regarding instances of non-compliance and to clarify that deficiencies will be subject to potential trade halts and the delisting process in the IEX Rule Series 14.500. The Exchange believes that these amendments will enhance IEX listing rules, thereby serving to improve the national market system and protect investors and the public interest.

Further, IEX listing rules will be amended to clarify the applicability of the Exchange's broad discretionary authority over the initial and continued listing of securities on the Exchange to securities listed under Chapter 16 as well as under Chapter 14. The Exchange believes that these amendments will enhance IEX listing rules by clarifying the Exchange authority to make listing decisions consistent with the protection of investors and the public interest.

In addition, the Exchange believes that the conforming, technical and housekeeping changes are designed to further the goals of the listing standards by providing clarity and consistency in the Exchange's rules.

Finally, the Exchange believes that the changes to Rules 16.110 and 16.111 to conform to substantially identical Nasdaq rules are consistent with the protection of investors and the public interest since the applicable listing standards as revised will continue to provide a strong indication of the issuer's ability to make necessary payments on Linked Securities and Index-Linked Exchangeable Notes. Moreover, the conforming changes are substantially identical to Nasdaq rules that were approved by the Commission or that have become effective and therefore

the Exchange does not believe that the proposed changes raise any new or novel issues not previously considered by the Commission.

For these reasons, IEX believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 based on substantially identical Nasdaq rules and is comparable to NYSE Arca rules, in each case based on DTM Staff guidance. Consequently, the Exchange believes the proposed rule changes will have no negative effect 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 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) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 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.

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.

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-2017-14 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-2017-14. 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-2017-14 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).