

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81365; File No. SR-IEX-2017-26)

August 9, 2017

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Correct Nonsubstantive Conflicting Rule Text in Rule 11.190.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 8, 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”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to correct nonsubstantive conflicting rule text related to the behavior of market orders entered during the Pre-Market Session<sup>6</sup> marked DAY that are eligible to participate in either auctions for IEX-listed securities pursuant to Rule 11.350, or the opening process for non-IEX-listed

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> See Rule 1.160(z).

securities pursuant to Rule 11.231. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>7</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The text of the proposed rule change is available at the Exchange’s website at [www.iextrading.com](http://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 [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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to correct nonsubstantive conflicting rule text related to the queuing behavior of market orders entered during the Pre-Market Session marked DAY that are eligible to participate in auctions for IEX-listed securities pursuant to Rule 11.350, or in the opening process for non-IEX-listed securities pursuant to Rule 11.231. On April 13, 2017, IEX filed with the Commission a proposed rule change to amend IEX Rule 11.231 to modify the manner in which the Exchange opens trading for non-IEX-listed securities beginning at the start of Regular Market Hours; and to amend IEX Rules 11.190 and 11.220 to specify the

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4.

order types eligible to participate in the proposed opening process for non-IEX listed securities and the priority of such orders (the “Opening Process”). The proposed rule change for the Opening Process was published for comment in the Federal Register on April 28, 2017.<sup>9</sup> On April 20, 2017, IEX filed with the Commission a proposed rule change to adopt rules governing auctions in IEX-listed securities, provide for the dissemination of auction related market data, and establish rules relating to trading halts and pauses (“IEX Auctions”). The proposed rule change for IEX Auctions was published for comment in the Federal Register on May 9, 2017.<sup>10</sup> On July 24<sup>th</sup> 2017, the Commission approved on an accelerated basis IEX’s proposed Opening Process, as modified by Amendment 3.<sup>11</sup> On August 4, 2017, the Commission approved on an accelerated basis the IEX Auctions proposal, as modified by Amendment 2.<sup>12</sup>

The rule changes related to both the Opening Process and IEX Auctions included a modification to Rule 11.190(a)(2)(E)(iii), to specify that market orders marked DAY entered during the Pre-Market Session will be queued by the System until the Opening Auction (or Halt Auction, as applicable), for IEX-listed securities pursuant to IEX Rule 11.350, or until the Opening Process for non-IEX-listed securities pursuant to IEX Rule 11.231. However, because the proposed rule changes for the Opening Process and IEX Auctions were filed and pending action from the Commission concurrently, the proposed rule changes specified in Exhibit 5 to each rule change filing were each separately specified as compared to existing IEX rules.

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<sup>9</sup> See Securities Exchange Act Release No. 80514 (April 24, 2017), 82 FR 19763 (April 28, 2017).

<sup>10</sup> See Securities Exchange Act Release No. 80583 (May 3, 2017), 82 FR 21634 (May 9, 2017).

<sup>11</sup> See Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017).

<sup>12</sup> See Securities Exchange Act Release No. 81316 (August 4, 2017), awaiting publication to the Federal Register.

Therefore, the Exhibits 5 to each rule change filing specify distinct behavior, pursuant to Rule 11.190(a)(2)(E)(iii), for how market orders marked as DAY queue before the applicable open for the security in question. Exhibit 5 to the IEX Auctions filing provides that such orders queue until the Opening Auction (or Halt Auction, as applicable) for IEX listed securities. Exhibit 5 to the Opening Process filing provides that such orders queue until the Opening Process for non-listed securities. As a technical matter, after the Commission's approval of the rule changes related to IEX Auctions, which came subsequent to the Commission's approval of the Opening Process, Rule 11.190(a)(2)(E)(iii) no longer specifies the queueing behavior of market orders entered during the Pre-Market Session marked DAY in the Opening Process. Accordingly, IEX proposes to consolidate and correct the rule text changes to Rule 11.190(a)(2)(E)(iii), as approved in each rule filing to provide that Market orders marked DAY submitted before the open of the Regular Market Session are queued by the System until the Opening Auction (or Halt Auction, as applicable) for IEX-listed securities pursuant to IEX Rule 11.350, or until the Opening Process for non-IEX-listed securities pursuant to IEX Rule 11.231, except market orders marked DAY that are designated to route pursuant to Rule 11.230(c). Market orders marked DAY are eligible to trade or route during the Regular Market Session and treated by the System as having a time-in-force of IOC.

As recently announced by IEX Trading Alert #2017-027, on August 24, 2017 the Exchange is beginning a multi-phase deployment of the Opening Process functionality for non-test securities.<sup>13</sup> Furthermore, the Exchange believes that some Members are currently in the process of making or testing technology changes for the Exchange's Opening Process. Accordingly, in order to provide clarity to Members and other market participants regarding the

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<sup>13</sup> See IEX Trading Alert #2017-027 (Deployment Schedule for New Opening Process for Non-IEX-Listed Securities), August 3, 2017.

Opening Process, and specifically to avoid potential confusion regarding the queueing behavior of market orders entered during the Pre-Market Session marked as DAY, the Exchange is proposing to make the conforming change to Rule 11.190(a)(2)(E)(iii) described above to clearly state that such orders will be queued by the System until the Opening Auction (or Halt Auction, as applicable) for IEX-listed securities pursuant to IEX Rule 11.350, or until the Opening Process for non-IEX-listed pursuant to IEX Rule 11.231.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>14</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> 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. The Exchange believes it is consistent with the Act to correct the conflicting rule provisions so that IEX's rules are accurate and descriptive of the System's functionality as approved by the Commission, and to avoid any potential confusion among Members and market participants regarding the Opening Process.

### 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 believes that the proposed correction does not impact competition in any respect since it is designed to correct a conflict between two approved versions of Exchange rule 11.190(a)(2)(E)(iii), without changing the substance of the Rules as separately approved.

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<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

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)<sup>16</sup> of the Act and Rule 19b-4(f)(6)<sup>17</sup> 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.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> 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 so that the proposal may become operative upon filing. The Exchange represents that waiver will allow it to promptly reconcile a potential conflict between two recently-approved changes to IEX Rule 11.190(a)(2)(E)(iii) without changing the substance

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> Under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has requested that the Commission waive the pre-filing requirement for its proposal in order to allow it to file this clarification without undue delay. The Commission hereby waives that requirement.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

of that Rule, thus avoiding any potential confusion among market participants regarding the Exchange's Opening Process. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will resolve a potential ambiguity in IEX's rules concerning queuing of market orders marked DAY before the open of trading involving either IEX-listed securities or non-IEX-listed securities. While the current rule text references the term "Opening Auction" for both types of securities, IEX uses the term "Opening Process" for the latter. To avoid any potential confusion, IEX is proposing to use that more precise term in this subsection of the rule when it references non-IEX-listed securities. Accordingly, the proposed rule change raises no new or novel issues and the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing.<sup>21</sup>

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)<sup>22</sup> 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:

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<sup>21</sup> 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).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-26 on the subject line.

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-2017-26. 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 IEX's principal office and on its Internet website at [www.iextrading.com](http://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-2017-26 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.<sup>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).