

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81988; File No. SR-IEX-2017-38)

October 31, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Rule 6.210 Related to Ex-Dates for Securities Listed or Traded on the Exchange

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 27, 2017, the Investors Exchange LLC (“IEX” or “Exchange”) filed with the Securities and Exchange Commission (“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 Commission a proposed rule change to adopt new Rule 6.210 (Ex-Dividend or Ex-Right Dates) related to ex-dates for securities listed or traded on the Exchange. 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.⁶

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.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 17, 2016 the Commission granted IEX's application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. The Exchange plans to begin a listing program in early 2018 and is proposing to adopt Rule 6.210 related to ex-dates for securities listed on IEX.

IEX Rule 2.160(c)(4) requires in substance that an Exchange Member must be a Member of a registered clearing agency registered with the Commission pursuant to Section 17A of the Act or clear transactions executed on the Exchange through another Member that is a Member of a registered clearing agency. In addition, IEX Rule 6.110(a) provides that every Exchange Member who is a Member of a registered clearing agency shall implement comparison and settlement procedures under the rules of such entity. Further, IEX Rule 11.250(a) provides that

the Exchange maintains connectivity and access to the Universal Trade Capture of the National Securities Clearing Corporation (“NSCC”) for the transmission of executed transactions. Pursuant to these provisions, all IEX Members are either Members of the NSCC or clear transactions executed on the Exchange through another Member that is a Member of NSCC. Thus, IEX Members must comply with NSCC comparison and settlement procedures for all transactions executed on the Exchange.

NSCC and other listing exchanges have rules related to securities settlement which specify the requirements and process for designation of so-called “ex-dates” in the event that the issuer of a security enters into certain types of corporate actions, including declaration of a dividend, and issuance of rights or warrants (i.e., the corporate action consideration).⁷ Generally, an issuer of securities will establish a record date to determine which security holders are entitled to the corporate action consideration – security holders of record on the record date are entitled to the corporate action consideration. Because virtually all securities transactions now settle on the second business day after trade date (“T+2”) pursuant to Rule 15c6-1 under the Act,⁸ a purchaser of a security on the business day prior to the record date will not be the security holder of record on the record date. For example, if the record date for XYZ’s issuance of a dividend is December 19, 2017, a purchaser on December 18, 2017 will not be the holder or record until December 20, 2017. The purchaser will not be the holder of record on December 19, 2017 and therefore will not be entitled to the dividend.

⁷ See, e.g., NYSE Arca Equities Rule 7.4.

⁸ The Commission recently adopted amendments to Rule 15c6-1(a) under the Act to shorten the standard, regular-way settlement cycle from T+3 to T+2 or the second business day after trade date. See, Securities Exchange Act Release No. 34-80295 (March 22, 2016), 82 FR 15564 (March 29, 2017) (S7-22-16). The compliance date for the amendments was September 5, 2017.

Thus, to provide certainty as to which security holder will receive the corporate action consideration it is necessary to establish “ex-dates” that denote the date on and after which a security will no longer trade with the corporate action consideration. Most listing exchanges, as well as the Financial Industry Regulatory Authority (“FINRA”) have such rules, which specify that generally a security will trade “ex” two [sic] business days [sic] prior to the record date. In the example above, XYZ would trade “ex-dividend” beginning on December 18, 2017.

Accordingly, in connection with the planned launch of its listing program, the Exchange proposes to adopt Rule 6.210 to specify when transactions in securities traded “regular” shall be “ex-dividend” or “ex-rights” as the case may be. As proposed, Rule 6.210 provides that transactions in securities traded "regular" shall be "ex-dividend" or "ex-rights" as the case may be, on the business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise.⁹ Should such record date or such closing of transfer books occur upon a day other than a business day Rule 6.210 shall apply for the second preceding business day.

As proposed, Rule 6.210 is substantially identical to NYSE Arca Rule 7.4-E with only a minor difference in that proposed Rule 6.210 refers to “securities” rather than “stocks” to be inclusive of listed securities that are not strictly speaking characterized as stocks (e.g., rights and warrants).

⁹ Exceptions would be expected to occur in circumstances where the listed company’s corporate action consideration is relatively large (typically 25% or greater than the value of the security) or definitive information is not received by the Exchange sufficiently in advance of the record date, as required by IEX Rule 14.207(e)(6), to permit the designation of an “ex-dividend” or “ex-rights” date in accordance with Rule 6.210. In such cases, the ex-date would generally be on the first business day which is practical given the relevant circumstances.

In connection with their “ex-date” rules, other listing exchanges disseminate relevant information regarding such corporate actions by their listed companies to market participants.¹⁰ Corporate action information regarding IEX listed companies will also be posted on the IEX website for viewing and download, without charge.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general and furthers the objectives of Section 6(b)(5)¹² of the Act 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 that the proposed rule change supports these objectives because it is designed to enable the Exchange to provide clarity to market participants on applicable “ex-dates” for securities listed on IEX in connection with corporate actions involving consideration to be paid or distributed to security holders.

Further, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it provides authority to the Exchange to determine ex-dates in circumstances warranting a different ex-date than the business day

¹⁰ See, <http://www.nyxdata.com/Data-Products/NYSE-Corporate-Actions?rfrby=sum#> describing the NYSE Group Corporate Actions package of reports sold by NYSE Group regarding corporate actions for all equities listed on NYSE, NYSE MKT and NYSE Arca. See also, <http://www.nasdaqtrader.com/Trader.aspx?id=dailylistpd> describing the Nasdaq Daily List sold by Nasdaq that provides certain corporate action data for Nasdaq listed securities. See also, BAT BZX (“BATS”) Exchange corporate action reports available without charge at: https://www.bats.com/us/equities/market_statistics/corporate_action/.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

preceding the record date fixed by the company or the date of closing of transfer books.

Finally, the Exchange believes that the proposed rule change will serve to promote clarity and consistency among market participants thereby facilitating investor protection and the public interest.

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, as amended. The proposed rule change is not designed to address any competitive issues but rather to provide for the appropriate determination and dissemination of ex-dates, to provide certainty as to which security holder will receive the corporate action consideration. The Exchange also believes that the proposed rule change will serve to promote clarity and consistency, as noted in the Statutory Basis section, thereby reducing burdens on competition and facilitating investor protection.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and

¹³ 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ 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. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange's proposed rule change is substantially similar to a provision to another self-regulatory organization's rules,¹⁷ and the Exchange's proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.¹⁸

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

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See NYSE Arca Rule 7.4-E.

¹⁸ 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).

Commission shall institute proceedings to determine whether the proposed rule 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-2017-38 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-2017-38. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-38, 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

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Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).