

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82815; File No. SR-IEX-2018-05)

March 6, 2018

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 11.270 (Clearly Erroneous Executions) to Preclude Members from Requesting a Review of a Volatility Auction as a Clearly Erroneous Execution

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 February 23, 2018, 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 amend Rule 11.270 (Clearly Erroneous Executions) to preclude Members from requesting a review of a Volatility Auction<sup>6</sup> as a clearly erroneous execution. The Exchange has designated this rule

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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 11.350(f).

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 change is to amend Rule 11.270 (Clearly Erroneous Executions) to preclude Members from requesting a review of a Volatility Auction as a clearly erroneous execution.

On September 19, 2016, Plan Participants, with input from the Advisory Committee and staff of the Commission, proposed the twelfth amendment to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit

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

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

Down Plan” or “Plan”),<sup>9</sup> which contained certain enhancements to the reopening process following a Trading Pause (“Amendment No. 12”).<sup>10</sup> The Exchange is a Participant of the Plan and a member of the Operating Committee, and intends on launching a listings program for corporate issuers in 2018, at which point IEX will be a Primary Listing Exchange. In conjunction with Amendment No. 12, each Primary Listing Exchange filed proposed rule changes with the Commission under Section 19(b) of the Exchange Act to amend their respective rules for automated reopenings following a Trading Pause, and to preclude Members from requesting a review of reopening executions as clearly erroneous.<sup>11</sup> On January 19, 2017, the Commission approved Amendment No. 12.<sup>12</sup> On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan, which extended the pilot period of the Plan from April 21, 2017, to April 16, 2018, and required the Processor to publish certain data regarding the reopening processes of the Primary Listing Exchanges.<sup>13</sup> On April 28, 2017, the Commission noticed for immediate effectiveness the Fourteenth Amendment to the Plan, which extended the

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<sup>9</sup> See also Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”). Note, unless otherwise specified, capitalized terms used herein have the same meaning as set forth in the Plan or in Exchange rules.

<sup>10</sup> See letter from Elizabeth K. King, General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated September 16, 2016.

<sup>11</sup> See Securities Exchange Act Release Nos. 79162 (October 26, 2016), 81 FR 75875 (November 1, 2016) (SR-BatsBZX-2016-61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR-NASDAQ-2016-131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR-NYSEArca-2016-130). See also Cboe BZX Exchange, Inc. (“Cboe Bats”) Rule 11.17(a); the Nasdaq Stock Market LLC (“Nasdaq”) Rule 11890(a)(1); and NYSE Arca, Inc. (“Arca”) Rule 7.10-E(a).

<sup>12</sup> See Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017).

<sup>13</sup> See Securities Exchange Act Release No. 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017).

implementation date of Amendment No. 12 to the end of the third quarter of 2017.<sup>14</sup> Finally, on September 26, 2017, the Commission noticed for immediate effectiveness the Fifteenth Amendment to the Plan, which extended the implementation date of Amendment No. 12 to no later than November 30, 2017.<sup>15</sup>

On August 4, 2017, the Commission approved a proposed rule change filed by the Exchange to adopt rules governing auctions in IEX-listed securities, including a Volatility Auction process to resume trading after a Trading Pause in an IEX-listed security pursuant to the Plan.<sup>16</sup> The Exchange's rules governing auctions include the enhancements to the reopening process following a Trading Pause as set forth in Amendment No. 12, but do not include amendments to the Exchange's rules governing clearly erroneous executions.<sup>17</sup> Accordingly, in order to ensure the Exchange's rules are consistent with the Plan and the rules of other Primary Listing Exchanges, the Exchange is proposing to amend Rule 11.270 (Clearly Erroneous Executions) to preclude Members from requesting a review of a Volatility Auction as a clearly erroneous execution.<sup>18</sup>

In adopting and approving Amendment No. 12 and the related exchange filings, the Participants and the Commission, respectively, have agreed that the procedures for reopening trading following a Trading Pause reduces the potential that an order or orders entered by one or more Members caused such execution to be clearly erroneous. Specifically, the Participants

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<sup>14</sup> See Securities Exchange Act Release No. 80549 (April 28, 2017), 82 FR 20928 (May 4, 2017).

<sup>15</sup> See Securities Exchange Act Release No. 81720 (September 26, 2017), 82 FR 45922 (October 2, 2017).

<sup>16</sup> See Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017).

<sup>17</sup> See *supra* note 9 [sic].

<sup>18</sup> See *supra* note 11 [sic].

believe that the proposed standardized procedures for reopening trading following a Trading Pause incorporates a methodology that allows for widened collars, which may result in a reopening price away from prior trading prices, but which reopening price would be a result of a measured and transparent process that eliminates the potential that such trade would be considered erroneous. Therefore, consistent with the Plan, and the rules of other Primary Listing Exchanges, the Exchange proposes to amend Rule 11.270 (Clearly Erroneous Executions) to preclude Members from requesting a review of a Volatility Auction as a clearly erroneous execution.<sup>19</sup>

As announced in IEX Trading Alerts #2017-015 and #2017-046, the Exchange intends to become a Primary Listing Exchange and support its first IEX-listed security in 2018.<sup>20</sup> In addition, as part of the listings initiative, the Exchange is providing a series of industry wide weekend tests for the Exchange and its Members to exercise the various technology changes required to support IEX Auctions and listings functionality.<sup>21</sup> Accordingly, the Exchange is

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<sup>19</sup> The Exchange notes that Participants will be engaging in a more comprehensive review of Rule 11.270 in connection with amendments to the Plan relating to tiering of securities and applicable percentage parameters. The Exchange proposes to make this limited amendment to Rule 11.270 as an initial step to eliminating its clearly erroneous executions rules in their current form.

<sup>20</sup> See [IEX Trading Alert #2017-015](#) (Listings Specifications, Testing Opportunities, and Timelines), May 31, 2017. See also [IEX Trading Alert #2017-046](#) (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017.

<sup>21</sup> See, e.g., [IEX Trading Alert #2017-028](#) (First Listings Functionality Industry Test on Saturday, August 26), August 17, 2017; [IEX Trading Alert #2017-037](#) (Second Listings Functionality Industry Test on Saturday, September 9), September 7, 2017; [IEX Trading Alert #2017-039](#) (Third Listings Functionality Industry Test on Saturday, September 23), September 18, 2017; [IEX Trading Alert #2017-040](#) (Rescheduled 4<sup>th</sup> Listing Functionality Industry Test), September 29, 2017; [IEX Trading Alert #2017-046](#) (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017; and [IEX Trading Alert #2017-047](#) (Fourth Listings Functionality Industry Test on Saturday, November 4), October 31, 2017.

proposing to implement the proposed changes during the industry wide testing period in 2018 so that Members are on notice regarding the ineligibility of Volatility Auctions for review as a clearly erroneous execution as they optimize their systems to interact with IEX Auctions.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>22</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>23</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.

Specifically, the Exchange believes that precluding Members from requesting review of a Volatility Auction as a clearly erroneous execution would remove impediments to and perfect the mechanism of a free and open market and a national market system because the standardized procedures for reopening trading following a Trading Pause reduce the possibility that one or more orders from a Member caused a Volatility Auction to be clearly erroneous. Specifically, the Exchange believes that the standardized procedures for reopening trading following a Trading Pause incorporate a methodology that allows for widened collars, which may result in a reopening price away from prior trading prices, but which reopening price would be a result of a measured and transparent process that eliminates the potential that such trade would be considered erroneous.

Furthermore, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest in that it is designed to ensure the Exchange's rules

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<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

are consistent with the Plan and the rules of other Primary Listing Exchanges, which will increase transparency and create consistency regarding the rules governing clearly erroneous executions among Primary Listing Exchanges.

Lastly, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest because, as discussed in the Purpose section, the Exchange is proposing to implement the proposed changes during the industry wide testing period in 2018 so that Members are on notice regarding the ineligibility of Volatility Auctions for review as a clearly erroneous execution as they optimize their systems to interact with IEX Auctions.

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 change does not impact inter-market competition in that it is designed to ensure the Exchange's rules are consistent with the Plan and the rules of other Primary Listing Exchanges, which will increase transparency and create consistency regarding the rules governing clearly erroneous executions among Primary Listing Markets.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition, because the proposed changes apply to all Members on a fair and equal basis.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>26</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>27</sup> permits the Commission to 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 Exchange stated that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed rule change upon effectiveness, thus immediately increasing transparency and creating consistency regarding the rules governing clearly erroneous executions among Primary Listing Exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>28</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 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.

<sup>26</sup> 17 CFR 240.19b-4(f)(6).

<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>28</sup> 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).



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 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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2018-05 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-2018-05. 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 such 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-2018-05, 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>29</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).