

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83586; File No. SR-IEX-2018-12)

July 2, 2018

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.420 Concerning the Order Audit Trail System Requirements to Make Conforming and Technical Changes

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 21, 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 Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend Rule 11.420 concerning the Order Audit Trail System (“OATS”) requirements to make conforming and technical changes. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the

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 15 U.S.C. 78s(b)(3)(A).

Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷

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 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 Exchange is proposing to make three changes to Rule 11.420 related to OATS reporting requirements to (1) amend Rule 11.420(a)(13) to permit members to route orders to two Reporting Members for a defined period of time provided certain conditions are met without losing the exception from the definition of "Reporting Member" in conformance to comparable provisions of the Financial Industry Regulatory Authority ("FINRA") Rule 7410; (2) amend rule citations in Rule 11.420(c) to correct [sic] citation to FINRA Rule 7430 to FINRA Rule 4590; and (3) amend the rule reference in Rule 11.420(g) to correct the reference to FINRA Rule 7470A to FINRA Rule 7470.

Each proposed change is described below.

⁷ 17 CFR 240.19b-4.

First Change

IEX Rule 11.420 imposes an obligation on Exchange Members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, cancelled or executed by Exchange Members in securities traded on IEX. FINRA's OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes and transactions. This information is used by FINRA staff to conduct surveillance and investigations of IEX Members (and members of FINRA and certain other national securities exchanges) for potential violation of Exchange rules (or rules of another national securities exchange in the case of a member of such exchange), federal securities laws, and FINRA rules.

In general, IEX Rule 11.420 applies to any IEX Member that is a "Reporting Member," which is defined in IEX Rule 11.420(a)(13) as a Member that receives or originates an order and has an obligation to record and report information under IEX Rule 11.420(d) and 11.420(e). However, under Rule 11.420(a)(13)(A) a Member is not considered a Reporting Member in connection with an order if the following four criteria are met:

- The Member engages in non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;
- the Member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;
- the receiving Reporting Member records and reports all information required

under IEX Rules 11.420(d) and 11.420(e) with respect to the order; and

- the Member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of IEX Rules 11.420(d) and 11.420(e).

On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to route its orders to two receiving Reporting Members, if two conditions were met.⁸ First, the orders are routed by the member to each receiving Reporting Member on a predetermined schedule approved by FINRA. Second, the FINRA member's orders are routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. The rule change permits FINRA members to continue to rely on the exception from the definition of Reporting Member if, for a limited time, the member routes orders to two different Reporting Members, provided the criteria are met. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders two different clearing firms, both of which report the introducing firm's information to OATS during the transition time.⁹ The Nasdaq Stock Market LLC ("Nasdaq") recently amended its rules to conform to this FINRA rule change.¹⁰ The Exchange believes that this additional limited exception is appropriate for its Members, which likewise may encounter a transition to a clearing firm whereby it [sic] would no longer be eligible for the exception to the definition of Reporting Member. Accordingly,

⁸ See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).

⁹ Id. At 30220.

¹⁰ See Nasdaq Rule 7410A(o)(1)(A)(ii). See also Securities Exchange Act Release No. 83115 (April 26, 2018), 83 FR 19384 (May 2, 2018) (SR-NASDAQ-2018-030).

the Exchange is proposing to amend Rule 11.420(a)(13).

Second Change

The Exchange is proposing to correct a rule citation in Rule 11.420(c), which specifies the requirements for synchronization of Member business clocks, and states that IEX Members shall comply with FINRA Rule 7430 as if such Rule were part of IEX's Rules. There is no FINRA Rule 7430, but rather the appropriate FINRA rule to cite to is FINRA Rule 4590 "Synchronization of Member Business Clocks." The Exchange also notes that Nasdaq recently made a comparable change to Nasdaq Rule 7430A.¹¹ Accordingly, the Exchange proposes to correct the erroneous citation in Rule 11.420(c).

Third Change

The Exchange is proposing to correct a rule citation in Rule 11.420(g), which provides that IEX may grant an exemption to the OATS order recording and data transmission requirements to a Member under specified circumstances. The title to the rule subsection incorrectly references FINRA Rule 7470A. There is no FINRA Rule 7470A, but rather the appropriate FINRA rule to reference is FINRA Rule 7470 "Exemption to the Order Recording and Data Transmission Requirement." Accordingly, the Exchange proposes to correct the erroneous reference in Rule 11.420(g).

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹² of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and

¹¹ See supra note 8.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

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 by harmonizing the Exchange's OATS rules with those of FINRA, on which they are based. Consequently, the proposed changes will conform Exchange rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. With respect to the proposed amendment to Rule 11.420(a)(13)(A), the exemption will provide Exchange members the same flexibility to transition to a new clearing firm that FINRA members enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Further, the change will also align the Exchange rulebook with FINRA's in this regard, thereby eliminating potential complexity from FINRA's work under a regulatory services agreement with the Exchange.

With respect to the technical corrections to Rules 11.420(c) and 11.420(g), the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by incorrect rule citations in the Rules.

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 changes align the Exchange's rules with those of FINRA, which will assist it in its oversight work done pursuant to a regulatory services agreement, and makes [sic] technical corrections to the rules. Consequently, the Exchange does not believe that the

proposed changes implicate competition at all.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ 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 so that the proposal may become operative upon filing. The Commission does not believe that any new or novel issues are raised by the proposal; the proposal aligns IEX's rule with the rule of Nasdaq and FINRA. The Commission believes the waiver of the operative delay is consistent

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ Id.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal 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 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 email to rule-comments@sec.gov. Please include File Number SR-IEX-2018-12 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-2018-12. This file number

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).

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 Room, 100 F Street, NE, Washington, DC 20549. 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. 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-2018-12 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

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).