

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83609; File No. SR-IEX-2018-14)

July 9, 2018

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 16.160 to Remove Form 19b-4(e) Filing Requirement

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 26, 2018, 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 IEX is filing with the Commission a proposed rule change to amend IEX Rule 16.160 related to derivative securities traded under unlisted trading privileges (“UTP”) to remove the requirement in Rule 16.160(a)(1) for the Exchange to file with the Commission a Form 19b-4(e) for each “new derivative securities product” as defined in Rule 19b-4(e) under the Act⁶ (a “Derivative Security”) traded under UTP and renumber the remaining provisions of Rule 16.160(a) to maintain an organized rule structure. The Exchange has

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 CRF [sic] 240.19b-4.

⁶ 17 CRF [sic] 240.19b-4(e).

designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁷ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁸ 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 purpose of the proposed rule change is to amend Rule 16.160 related to derivative securities traded under UTP by removing the requirement in Rule 16.160(a)(1) for the Exchange to file with the Commission a Form 19b-4(e) for each Derivative Security, and renumbering the remaining rules of Rule 16.160(a) to maintain an organized rule structure, as described below.

Rule 16.160(a)(1) sets forth the requirement for IEX to file with the Commission a Form 19b-4(e) with respect to each Derivative Security that is traded under UTP. However, IEX believes that it should not be necessary to file a Form 19b-4(e) with the Commission if it begins trading a Derivative Security on a UTP basis, because Rule 19b-4(e)(1) under the Act refers to the “listing and trading” of a “new derivative securities product.” The Exchange believes that

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(e) [sic].

the requirements of that rule refers [sic] to when an exchange lists and trades a Derivative Security, and not when an exchange seeks only to trade such product on a UTP basis pursuant to Rule 12f-2 under the Act.⁹ Therefore, IEX proposes to delete the requirement in current Rule 16.160(a)(1) for IEX to file a Form 19b-4(e) with the Commission with respect to each Derivative Security it begins trading on a UTP basis. In addition, as a result of the deletion of current Rule 16.160(a)(1) IEX proposes to renumber current Rules 16.160(a)(2)-(6), as Rules 16.160(a)(1)-(5) respectively.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁰ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ 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, eliminating the requirement to file a Form 19b-4(e) for each Derivative Security the Exchange begins trading on a UTP basis removes an unnecessary regulatory requirement thereby providing for a more efficient process for adding Derivative Securities to trading on the Exchange on a UTP basis.

In addition, the Exchange notes that a substantially identical proposed rule change by NYSE National, Inc. (“NYSE National”) was recently approved by the Commission.¹² In particular, the Commission noted in the approval order that it “believes that the filing of a Form

⁹ 17 CFR 240.12f-2.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (Order Approving File No. SR-NYSENAT-2018-02).

19b-4(e) is not required when an Exchange is trading a new derivative securities product on a UTP basis only”¹³ and also found that the NYSE National’s proposed rule change is “consistent with the requirements of Section 6(b)(5) of the Act.”¹⁴

With respect to the renumbering of current Rules 16.160(a)(2)-(6) as Rule 11.160(a)(1)-(5), the Exchange believes that these changes are consistent with the Act because they will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion.

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. To the contrary, removing the requirement to file a Form 19b-4(e) will serve to enhance competition by providing for the efficient addition of Derivative Securities for trading under UTP on IEX. To the extent that a competitor marketplace believes that the proposed rule change places it at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

In addition, the proposal to renumber the current Rules 16.160(a)(2)-(6) as Rules 16.160(a)(1)-(5) does not impact competition in any respect since it merely maintains a clear and organized rule structure.

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

¹³ See supra note 12 at page 23975.

¹⁴ See supra note 12 at page 23976.

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)¹⁵ of the Act and Rule 19b-4(f)(6)¹⁶ 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.¹⁷

The Exchange has requested a waiver of the 30-day operative delay so that the Exchange can begin trading Derivative Securities on a UTP basis without filing a Form 19b-4(e) with the Commission prior to the end of the 30-day operative delay. Because the proposed rule change is based on a rule change previously approved by the Commission¹⁸ and does not present any novel issues, the Commission believes that waiving the 30-day operative delay period is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁹

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 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.

¹⁸ See supra note 12.

¹⁹ 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 under Section 19(b)(2)(B)²⁰ 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 proposal 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-2018-14 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 No. SR-IEX-2018-14. 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

²⁰ 15 U.S.C. 78s(b)(2)(B).

20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also 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 No. SR-IEX-2018-14 and should be submitted on or before [insert 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).