

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79473; File No. SR-IEX-2016-17]

### Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Web site Data Publication Requirements Relating to the Regulation NMS Plan To Implement a Tick Size Pilot Program

December 6, 2016.

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 November 21, 2016, 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) of 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 IEX Rule 11.340 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

IEX has filed the proposed rule change for immediate effectiveness. IEX has requested that the SEC waive the 30-day operative period so that the proposed rule change may become operative upon filing.

The text of the proposed rule change is available at the Exchange’s Web site

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 statements 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 August 25, 2014, FINRA and several other self-regulatory organizations (the “Participants”) filed with the Commission, pursuant to Section 11A of the Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder,<sup>7</sup> the Plan to Implement a Tick Size Pilot Program.<sup>8</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>9</sup> The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>10</sup> The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>11</sup> On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.<sup>12</sup> Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. An amendment to the Plan adding IEX as a Participant was filed with the Commission on August 4, 20 [sic].<sup>13</sup> On

September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants’ exemptive request.<sup>14</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

IEX adopted rule amendments to implement the requirements of the Plan, including relating to the Plan’s data collection requirements and requirements relating to Web site data publication.<sup>15</sup> Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendix B to the Plan, IEX Rule 11.340(b)(2)(C) provides that IEX shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraphs (b)(2)(A) and (B) of Rule 11.340, publicly available on the IEX Web site on a monthly basis at no charge and shall not identify the Member that generated the data. IEX Rule 11.340(b)(3)(C), provides, among other things, that IEX shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) and (B) of Rule 11.340, publicly available on the IEX Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Supplementary Material .09 to IEX Rule 11.340 provides, among other things, that the requirement that IEX make certain data publicly available on the IEX Web site pursuant to Appendix B and Appendix C to the Plan shall

Rule 608(b)(3) of the Act because it involves solely technical or ministerial matters.

<sup>14</sup> See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

<sup>15</sup> See, e.g., Securities Exchange Act Release No. 78820 (September 13, 2016), 81 FR 64234 (September 19, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-IEX-2016-13); see also Securities Exchange Act Release No. 78481 (August 4, 2016) 81 FR 52933 (August 10, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-IEX-2016-07); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Claudia Crowley, Chief Regulatory Officer, IEX, dated August 30, 2016.

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 242.608.

<sup>8</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>9</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>10</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

<sup>11</sup> See Approval Order at 27533 and 27545.

<sup>12</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

<sup>13</sup> Securities Exchange Act Release No. 78702 (August 26, 2016). Pursuant to the terms of the plan, the amendment was effective on filing pursuant to

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<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.

commence at the beginning of the Pilot Period.

IEX is proposing amendments to Rule 11.340(b)(2)(C) (regarding Appendix B.I and B.II data) and Rule 11.340(b)(3)(C) (regarding Appendix B.IV data), to provide that data required to be made available on IEX's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .09 to Rule 11.340 would provide that, notwithstanding the provisions of paragraphs (b)(2)(C) and (b)(3)(C), IEX shall make data for the Pre-Pilot period publicly available on the IEX Web site pursuant to Appendix B to the Plan by February 28, 2017.<sup>16</sup>

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.

As noted in Item 1 of this filing, IEX has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>17</sup> which requires, among other things, that IEX rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,<sup>18</sup> which requires that IEX rules not impose any burden on competition that is not necessary or appropriate.

IEX believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations

pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the Commission. IEX believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting IEX to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

### *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. IEX notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting IEX to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. IEX notes that the proposed change will not affect the data reporting requirements of Members under IEX's rules. The proposal also does not alter the information required to be submitted to the Commission.

### *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.<sup>19</sup>

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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)<sup>20</sup> of the Act and Rule 19b-4(f)(6)<sup>21</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>22</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>23</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and public availability of such information. The proposal does not alter the information required to be submitted to the Commission.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement these proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016.

Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on November 30, 2016.<sup>24</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.<sup>25</sup> If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>26</sup> of the Act to

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> *Id.*

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>24</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>16</sup> With respect to data for the Pilot Period, the requirement that IEX make data publicly available on the IEX Web site pursuant to Appendix B to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the IEX Web site by February 28, 2017, which is 120 days following the end of October 2016. We note that FINRA has submitted a request for exemption, on behalf of all Plan Participants, requesting that the Commission grant an exemption from such provisions of the Plan. See, letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated November 14, 2016.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(8).

<sup>19</sup> Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2016-17 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-2016-17. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site 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-2016-17 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 14, 2016 at 10:00 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

- The Commission will consider whether to approve the 2017 budget of the Public Company Accounting Oversight Board and the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact Brent J. Fields in the Office of the Secretary at (202) 551-5400.

Dated: December 7, 2016.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-29794 Filed 12-8-16; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79479; File No. SR-NYSEMKT-2016-104]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That the Exchange Would Not Be Required To Report to the Securities Information Processor an Official Closing Price, as Defined Under Rule 123C(1)(e)(i)—Equities, as an “M” Sale Condition

December 6, 2016.

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>

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<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.

notice is hereby given that on November 23, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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

The Exchange proposes this rule change to provide that the Exchange would not be required to report to the securities information processor an Official Closing Price, as defined under Rule 123C(1)(e)(i)—Equities, as an “M” sale condition. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 provide that the Exchange would not be required to report to the securities information processor (“SIP”) an Official Closing Price, as defined under Rule 123C(1)(e)(i)—Equities, as an “M” sale condition.<sup>4</sup> This proposed rule change would not change how the Official Closing Price would be determined and disseminated if the Exchange is unable

<sup>4</sup> For a description of all sale conditions that are reportable to the SIP, including the “M” and “6” sale conditions, see the Consolidated Tape System Participant Communications Interface Specification, dated September 15, 2016, at 87 (“SIP Specifications”), available here: [https://www.ctaplans.com/publicdocs/ctaplans/notifications/trader-update/cts\\_input\\_spec.pdf](https://www.ctaplans.com/publicdocs/ctaplans/notifications/trader-update/cts_input_spec.pdf).