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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81982; File No. SR- IEX-2017-36)

October 30, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Eligibility of Market Orders and Limit Orders with a Time-In-Force of DAY for a Volatility Auction Occurring Outside of Regular Market Hours

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 October 19, 2017, 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

(a)[sic] 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 Commission a proposed rule change to clarify the eligibility of market orders and limit orders with a time-in-force of DAY<sup>6</sup> for a Volatility Auction<sup>7</sup> occurring outside of

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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 CRF 240.19b-4.

<sup>6</sup> See Rule 11.190(c)(3).

<sup>7</sup> See Rule 11.350(f).

Regular Market Hours.<sup>8</sup> The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>9</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>10</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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify the eligibility of market orders and limit orders with a time-in-force of DAY for a Volatility Auction occurring outside of Regular Market Hours. 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 Limit Up-Limit Down trading pause in an IEX-listed

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<sup>8</sup> See Rule 1.160(gg).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

security.<sup>11</sup> The Exchange intends on launching a listings program for corporate issuers in the fourth quarter of 2017.

Pursuant to Rule 11.350(f), the Exchange will conduct a Volatility Auction to resume trading following a Limit Up-Limit Down trading pause in an IEX-listed security pursuant to IEX Rule 11.280(e). Furthermore, pursuant to Rule 11.350(f)(3), when an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time,<sup>12</sup> or the Order Acceptance Period<sup>13</sup> of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e) would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time, no Closing Auction for the security will occur. Instead, the Exchange will conduct a Volatility Auction at the end of Regular Market Hours to determine the IEX Official Closing Price for the security.

When the Exchange is closing with a Volatility Auction pursuant to Rule 11.350(f)(3), Users may begin entering Auction Eligible Orders at the beginning of the Order Acceptance Period for participation in the Volatility Auction. Furthermore, Market-On-Close (“MOC”)<sup>14</sup> and Limit-On-Close (“LOC”)<sup>15</sup> orders queued for the Closing Auction will be incorporated into the Auction Book<sup>16</sup> for the Volatility Auction. Moreover, non-displayed interest with a time-in-force of DAY and pegged orders are immediately canceled, in order to allow Users to re-enter such

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<sup>11</sup> See Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017).

<sup>12</sup> See Rule 11.350(a)(22).

<sup>13</sup> See Rule 11.350(a)(29)(C).

<sup>14</sup> See Rule 11.350(a)(24).

<sup>15</sup> See Rule 11.350(a)(20).

<sup>16</sup> See Rule 11.350(a)(1).

interest as Auction Eligible Orders.<sup>17</sup> In contrast to the Closing Auction, there are no “lock-in” or “lock-out” restrictions on order entry, modification, or cancellation leading up to the Volatility Auction.

At the end of Regular Market Hours, the Exchange will attempt to conduct the Volatility Closing auction using all Auction Eligible Orders. However, if there is a market order imbalance (i.e., one or more market order shares will not be executed in the auction), or the auction match price is outside of the Volatility Auction Collar<sup>18</sup> (either resulting in an “Impermissible Price”<sup>19</sup>), the Order Acceptance Period is automatically extended for five minutes, and the Volatility Auction Collar is expanded in the direction of the Impermissible Price.<sup>20</sup> Similarly, if the Indicative Clearing Price differs by the greater of five percent (5%) or fifty cents (\$0.50) from any of the previous fifteen (15) Indicative Clearing Price disseminations, the Order Acceptance period will be extended for an additional five-minute period.<sup>21</sup> Pursuant to Supplemental Material .03 of Rule 11.350(a), if a Volatility Auction originally scheduled to occur during Regular Market Hours receives an automatic extension which causes the auction to occur outside of Regular Market Hours, limit orders with a time-in-force of DAY, and market orders which were submitted during the Order Acceptance Period within Regular Market Hours are included in the Volatility Auction, and are only canceled by the System after the auction match, or if the auction is extended to the end of Post-Market Hours.<sup>22</sup>

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<sup>17</sup> See Rule 11.350(a)(2).

<sup>18</sup> See Rule 11.350(a)(31).

<sup>19</sup> See Rule 11.350(a)(17).

<sup>20</sup> See Rule 11.350(f)(3)(B)(ii)(d). See also Rule 11.350(f)(2)(D) regarding the process for incremental extensions of the Order Acceptance Period.

<sup>21</sup> See Rule 11.350(f)(3)(B)(ii)(e).

<sup>22</sup> See Rule 1.160(aa).

### Proposed Clarifications

During development and testing of the functionality for Volatility Auctions, the Exchange identified a minor ambiguity in Supplemental Material .03 of Rule 11.350(a) regarding the eligibility of market orders and limit orders with a time-in-force of DAY when closing with a Volatility Auction outside of Regular Market Hours. Specifically, Supplemental Material .03 does not distinguish between routable and non-routable orders. Thus, the Exchange proposes to clarify that only non-routable limit orders with a time-in-force of DAY, and non-routable market orders which were submitted during the Order Acceptance Period within Regular Market Hours, are included in the Volatility Auction. The Exchange's routing logic is one of numerous distributed components that together make up the Exchange's System, but is separate and distinct from the order book logic that is responsible for conducting the Volatility Auction match; however, the Exchange did not explicitly make this important distinction between such processes in the current Supplemental Material .03. Furthermore, the interactions between the routing logic and the order book are optimized for continuous trading, and the archetypal Opening, Closing, IPO, Halt, and Volatility Auctions, but supporting the extended expiration of routable orders with a time-in-force of DAY when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours requires complex technology changes that raise risks to the System. Accordingly, in the interest of investor protection and the public interest, the Exchange is proposing to instead clarify that such routable orders will not be included in the Volatility Auction, and will instead be canceled at the end of Regular Market Hours in accordance with their standard expiry instructions.<sup>23</sup>

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<sup>23</sup> Notably, based on an analysis conducted by the Exchange of trading activity year to date, there have been only ten (10) cases where a trading pause was in effect during the final ten (10) minutes of the trading day, eight (8) of which occurred on fully electronic

The Exchange notes that Users intending to trade in a Volatility Auction which is extended that receive cancelations at the end of Regular Market Hours on routable orders with a time-in-force of DAY when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours will have a five-minute opportunity to re-enter such orders as Auction Eligible Orders during the extended Order Acceptance Period. Thus, the Exchange believes that there will be no material adverse impact to Users that choose to interact with IEX Auctions using routable orders when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours.

In addition to the proposed clarification discussed above, the Exchange proposes to further clarify that only non-routable market orders entered during the Order Acceptance Period within Regular Market Hours are included in the Volatility Auction when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours. On September 26, 2017, the Commission noticed an immediately effective Exchange rule filing to, in part, clarify that in the event an IEX-listed security is subject to a trading pause, the Router Constraint Reference Price<sup>24</sup> is invalid.<sup>25</sup> Furthermore, the Exchange clarified that pursuant to Rule 11.190(f)(2)(B), in the absence of a valid Router Constraint Reference Price, the Exchange will reject any routable orders for the security. Accordingly, consistent with Rule 11.190(f)(2)(B), the

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markets causing such primary listing market to close the security using an auction equivalent to the IEX Volatility Auction, but in none of the eight cases was there an extension of such auction that pushed the auction match beyond Regular Market Hours. Thus, the Exchange believes this scenario to be an extremely rare edge case.

<sup>24</sup> Rule 11.190(f)(2) sets forth the operation of the IEX Router Constraint, which prevents an order from routing at prices more aggressive than the Router Constraint price range. The Order Collar and Router Constraint price ranges are calculated by applying the numerical guidelines for clearly erroneous executions to the Order Collar Reference Price and Router Constraint Reference Price, respectively.

<sup>25</sup> See Securities and Exchange Act Release No. 81662 (September 20, 2017), 82 FR 44861 (September 26, 2017) (SR-IEX-2017-31).

Exchange proposes to clarify that when the Exchange is closing with a Volatility Auction, only non-routable market orders entered during the Order Acceptance Period within Regular Market Hours will be included in the Volatility Auction, because routable market orders will be rejected.

Lastly, as announced in IEX Trading Alert #2017-015, the Exchange intends to become a primary listing exchange and support its first IEX-listed security in November of 2017.<sup>26</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>27</sup> Accordingly, in order to provide clarity to Members and other market participants regarding the handling of orders eligible for participation in the Volatility Auction when the Exchange is closing with a Volatility Auction, and such auction is extended past the end of Regular Market Hours, the Exchange is proposing to make the clarifying changes to Supplemental Material .03 of Rule 11.350(a), as described above.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>28</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>29</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

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<sup>26</sup> See IEX Trading Alert #2017-015 (Listings Specifications, Testing Opportunities, and Timelines), May 31, 2017. See also IEX Trading Alert #2017-040 (Rescheduled 4<sup>th</sup> Listing Functionality Industry Test), September 29, 2017.

<sup>27</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.

<sup>28</sup> 15 U.S.C. 78f.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

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 clarification does not alter the substantive functionality governing the process for closing with a Volatility Auction that is extended beyond Regular Market Hours, but instead clarifies the Exchanges [sic] handling of orders during such process, and makes the Exchanges [sic] rules more clear and complete. The Exchange further believes that the proposed clarifying rule change is consistent with the protection of investors and the public interest because the proposed clarifications are designed to avoid any potential confusion regarding the Exchange's handling of orders when closing with a Volatility Auction that is extended beyond Regular Market Hours as IEX continues industry-wide testing to exercise the technology changes being made by the Exchange and its Members to support IEX as a listings market. Additionally, the Exchange believes it is consistent with the Act to clarify the rule provisions governing the process for closing with a Volatility Auction that is extended beyond Regular Market Hours so that IEX's rules are accurate and descriptive of the System's functionality as approved by the Commission, and to avoid any potential confusion among Members and market participants regarding such functionality.

Lastly, as discussed above, the Exchange believes that providing Users the proposed clarification regarding the Exchange's order handling is consistent with the protection of investors and the public interest, because supporting the extended expiration of routable orders with a time-in-force of DAY when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours requires complex technology changes that raise potential risks to the System. Accordingly, the Exchange is proposing to clarify the handling of such orders, rather than increase the technical complexities within the System that raise risks to

Exchange operations, Members, and their investor clients.

The Exchange also believes that the proposed rule change would not result in unfair discrimination, since all Members can enter routable or non-routable orders. Moreover, as discussed in the Burden on Competition section, Users intending to trade in the Closing Auction or the Volatility Auction that receive cancellations will have a five-minute opportunity to re-enter such orders as Auction Eligible Orders during the extended Order Acceptance Period.

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 correction does not impact inter-market competition in any respect since it is designed to clarify the Exchange's handling of orders when closing with a Volatility Auction that is extended beyond Regular Market Hours, without substantively changing the approved Rules governing such process.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition. Specifically, the Exchange believes that although routable limit orders with a time-in-force of DAY will be canceled at the end of Regular Market Hours when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours, whereas non-routable limit orders with a time-in-force of DAY will be eligible to participate in the Auction, Users intending to trade in the Closing Auction or the Volatility Auction that receive cancellations will have a five-minute opportunity to re-enter such orders as Auction Eligible Orders during the extended Order Acceptance Period.

Similarly, the Exchange believes that although routable market orders entered during the Order Acceptance Period within Regular Market Hours will be rejected and therefore will not be

eligible to participate in the auction when the Exchange is closing with a Volatility Auction, whereas non-routable market orders entered during the Order Acceptance Period within Regular Market Hours will be eligible to participate in the auction, Users intending to trade in the Volatility Auction that are rejected upon entry will have an opportunity to re-enter such orders as Auction Eligible Orders during the entire Order Acceptance Period. Thus, the Exchange believes that there will be no material adverse impact on competition between Members, or to any individual Member that chooses to interact with IEX Auctions using routable orders when the Exchange is closing with a Volatility Auction that is extended beyond Regular Market Hours. Furthermore, the Exchange notes that Users are free to enter both routable and non-routable orders on the Exchange, and therefore can optimize their interaction with the Exchange to avoid any unwanted cancellation.

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 Act<sup>30</sup> and Rule 19b-4(f)(6) thereunder.<sup>31</sup>

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 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

A proposed rule change filed under Rule 19b-4(f)(6)<sup>32</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>33</sup> 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 so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange's proposal does not raise any new or novel issues. In addition, the Commission notes that, as described above, Users whose routable orders are cancelled pursuant to the proposed rule will have an opportunity to participate in the auction when IEX closes with a Volatility Auction that occurs outside Regular Market Hours by re-entering their orders as Auction Eligible Orders during the extended Order Acceptance Period. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>34</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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.

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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.

<sup>32</sup> 17 CFR 240.19b-4(f)(6).

<sup>33</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>34</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).

#### 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-2017-36 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-2017-36. 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 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 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 website at [www.iextrading.com](http://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-2017-36 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>35</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>35</sup> 17 CFR 200.30-3(a)(12).

