

substantively altering the routing options it offers but rather is amending the terminology it uses to identify one particular routing option. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹²

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)¹³ 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 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 SR-IEX-2016-02 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-2016-02. This file number should be included on 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 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2016-02 and should be submitted on or before August 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78416; File No. SR-IEX-2016-01]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Collection of Exchange Fees and Other Claims and Billing Policy

July 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 12, 2016, the Investors Exchange LLC ("IEX" or the "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 Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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 to adopt Rule 15.120 and entitle it "Collection of Exchange Fees and Other Claims and Billing Policy" that (a) requires each IEX Member, and all applications for membership, to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange; and (b) require [sic] IEX Members to submit billing disputes within a certain time period.

The text of the proposed rule change is available at the Exchange's Web site 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 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 adopt Rule 15.120 to (a) require each IEX Member, and all applications for membership, to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange; and (b) require IEX Members to submit billing disputes within a certain time period.

Direct Debit Process

As proposed, paragraph (a) of Rule 15.120 requires IEX Members, and all applicants for membership, to provide a

¹² 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).

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges pursuant to Rule 15.110, including the Exchange Fee Schedule thereto; Regulatory Transaction Fees pursuant to Rule 15.110(b); dues, assessments and other charges pursuant to Rule 2.200 to the extent the Exchange were to determine to charge such fees; and fines, sanctions and other charges pursuant to Chapters 8 and 9 of the IEX Rulebook⁵ which are due and owing to IEX (collectively "Debit Amount"). The Exchange Fee Schedule specifies charges for transactions, routing and other services provided by the Exchange and certain fees that are collected by the Financial Industry Regulatory Authority ("FINRA"). Only the charges which require payment to the Exchange would be subject to direct debit. The Exchange does not currently charge fees for certain of the services listed on the Exchange Fee Schedule. The Exchange would entitle Rule 15.120 "Collection of Exchange Fees and Other Claims and Billing Policy."

As proposed, the Exchange will send a monthly electronic invoice by email to each Member, generally by the 12th day of each month for the Debit Amount due to IEX for the prior month. IEX will also send files to NSCC each month by the 28th day of each month to initiate the debit of the Debit Amount due to IEX as stated on the Member's invoice for the prior month. If the 28th day of the month is not a business day, IEX will send the files to NSCC by the preceding business day. IEX anticipates that NSCC will process the debits on the day it receives the file or the following business day. Because Members will

⁵ This includes, among other things, fines and sanctions which result from disciplinary proceedings or actions taken pursuant to Chapters 8 and 9 of the IEX Rules, as specified in Rule 8.310. In addition, the IEX notes that it also has authority under Rules 8.350 and 9.553 to suspend, cancel or bar a Member that fails to pay final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges pursuant to Rule 15.110, including the Exchange Fee Schedule thereto. While this direct debit process should minimize failures to pay, those rules nevertheless will act as a backstop to the direct debit process. With respect to disciplinary proceedings, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a Member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the IEX Member's invoice prior to the actual NSCC debit.

receive an invoice approximately two weeks before the debit date, Members will have adequate time to contact IEX staff with any questions concerning their invoice. If an IEX Member disagrees with the invoice in whole or in part, the Exchange would not commence the debit for the disputed amount until the dispute is resolved. Specifically, the Exchange will not include the disputed amount (or the entire invoice if it is not feasible to identify the disputed amounts) in the NSCC Debit Amount if the Member has provided written notification of the dispute to the IEX accounting department at accounting@iextrading.com by the later of the 25th of the month (or the following business day if the 25th is not a business day) or ten days after the date the electronic invoice was sent to the Member, and the amount in dispute is at least \$10,000 or greater.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing Members' account and disburse such amounts to the Exchange. In the instance where the Member clears through an IEX clearing member, the Exchange understands that the estimated transaction fees owed to the Exchange are typically debited by the IEX clearing Member on a daily basis using daily transaction detail reports provided by the Exchange to the IEX clearing Member in order to ensure adequate funds have been escrowed.

The Exchange believes that the proposed debiting process for IEX members would create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange. Collection matters could divert staff resources away from the Exchange's regulatory and business purposes. Moreover, the Exchange believes that it is reasonable to provide for a \$10,000 limitation on pre-debit billing disputes since it would be inefficient to delay a direct debit for a *de minimis* amount. Members will still be able to dispute billing amounts that are less than \$10,000 pursuant to paragraph (b) of Rule 15.120, as described below. The Exchange notes that a comparable debiting process is used by the NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX Phlx.⁶

⁶ See, NASDAQ Stock Market Rule 7007, NASDAQ OMX BX Rule 7011 and NASDAQ OMX Phlx Rule 909.

Billing Dispute Process

In addition to, and separate from, the pre-debit dispute process described above, the Exchange also proposes to adopt a billing policy, pursuant to paragraph (b) of Rule 15.120 to require all pricing disputes, with respect to fees payable to the Exchange,⁷ to be submitted to the Exchange in writing⁸ and accompanied by supporting documentation within sixty days of receipt of an invoice. The Exchange believes that this policy will conserve Exchange resources, which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the invoice was issued. The sixty-day limitation would be applicable to all fees specified in paragraph (a) of Rule 15.120.

The Exchange expects that the proposed policy will provide a potential cost savings to the Exchange in that it would alleviate administrative burdens related to belated billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. A similar policy is in place today at the NASDAQ Stock Market.⁹

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)¹⁰ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 the direct debit process will provide IEX Members with an efficient process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange. Similarly, the billing policy will set an objective process and will be fair to Members. Further, both aspects of the proposal are

⁷ Fees that are collected by FINRA would not be subject to the billing policy, and any disputes would need to be raised by the Member directly with FINRA.

⁸ The Exchange invoice will specify that billing disputes must be submitted to accounting@iextrading.com.

⁹ See, NASDAQ Stock Market Rule 7007.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

expected to result in lower administrative costs for the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is reasonable because it would ease the IEX Member's administrative burden in paying monthly invoices, avoid overdue balances and provide efficient collection from all IEX members who owe monies to the Exchange. Moreover, the Exchange believes that the 10-day minimum time frame that will be provided to Members to dispute invoices is reasonable and adequate to enable Members to identify potentially erroneous charges. In addition, the Exchange believes that the \$10,000 limitation on pre-debit billing disputes is reasonable because it would be inefficient to delay a direct debit for a *de minimis* amount. Members will still be able to dispute billing amounts that are less than \$10,000 pursuant to paragraph (b) of Rule 15.120.

Further, the Exchange believes that the requirement that billing disputes for specified fees be submitted to the Exchange within sixty days from receipt of the invoice will set objective standards, will be fair to Members, and that sixty days is ample time to review an invoice and dispute any pricing related to the transactions for that time period. It is also expected to lower the Exchange's administrative costs. An identical provision is applicable to NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX Phlx.¹²

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. With this proposal, the proposed debit process and billing policy would apply uniformly to all IEX members.

Further, this proposal is expected to provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange by Members. Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process would mitigate against IEX Member accounts becoming overdue.

The Exchange does not believe that the proposal will create an intermarket burden on competition since the Exchange will only debit fees (other than *de minimis* fees below \$10,000)

that are undisputed by the Member and Members will have a reasonable opportunity to dispute fees both before and after the direct debit process. The Exchange also does not believe that the proposal will create an intramarket burden on competition, since the proposed direct debit process and billing policy will be applied equally to all Members. Moreover, other exchanges use a comparable process which IEX believes is generally familiar to Members. Consequently, IEX does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission in connection with direct debit and billing policies of other exchanges.¹³

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

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ 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 at the time of the launch of its operation as a national securities exchange. The Exchange

stated that such waiver will allow the Exchange to implement a consistent process for its members to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow IEX to implement a rule that provides a process similar to that used by other exchanges for the direct debit of certain fees, fines, and charges, and also provides a mechanism to protect IEX members if they choose to contest an invoice. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change 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-2016-01 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-2016-01. This file number should be included on 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

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).

¹³ See note 7 [sic].

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹² See, NASDAQ Stock Market Rule 7007, NASDAQ OMX BX Rule 7011 and NASDAQ OMX Phlx Rule 909.

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 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2016-01, and should be submitted on or before August 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18054 Filed 7-29-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78414; File No. NYSEArca-2016-79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Virtus Japan Alpha ETF Under NYSE Arca Equities Rule 8.600

July 26, 2016.

I. Introduction

On May 24, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares

("Shares") of the Virtus Japan Alpha ETF ("Fund") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"). The proposed rule change was published for comment in the **Federal Register** on June 9, 2016.³ On June 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund ("ETF"). The Shares will be offered by Virtus ETF Trust II ("Trust"), which is registered with the Commission as an open-end management investment company.⁵ Virtus ETF Advisers LLC will serve as the investment adviser to the Fund ("Adviser"). Euclid Advisors LLC will serve as the Fund's sub-adviser ("Sub-Adviser"). ETF Distributors LLC will be the principal underwriter and distributor of the Fund's Shares, Virtus ETF Solutions LLC will serve as the administrator for the Fund, and the Bank of New York Mellon will serve as accounting services administrator, custodian, and transfer agent for the Fund. The Exchange further states that the Adviser and Sub-Adviser are not registered broker-dealers but are affiliated with a broker-dealer and each has implemented a "fire wall" with respect to such broker-dealer regarding

³ See Securities Exchange Act Release No. 77992 (Jun. 3, 2016), 81 FR 37222 ("Notice").

⁴ In Amendment No. 1, the Exchange made minor, clarifying changes to the description of the Fund, including, among other things, the Fund's permitted investments, restrictions on investments, calculation of net asset value ("NAV"), and publicly available information relating to the Fund and its investments. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2016-79/nysearca201679-1.pdf>.

⁵ According to the Exchange, the Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). The Exchange also states that, on February 26, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-206600 and 811-23078) ("Registration Statement"). The Exchange also states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Notice, *supra* note 3, 81 FR at 37222-37223.

access to information concerning the composition and/or changes to the Fund's portfolio.⁶

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.⁷

A. Exchange's Description of the Fund's Principal Investments

Under normal circumstances,⁸ the Fund will invest not less than 80% of its assets in the common stocks of certain Japanese companies listed in the JPX-Nikkei 400 Total Return Index ("Index"), a free-float adjusted market-capitalization-weighted equity index composed of 400 Tokyo Stock Exchange-listed securities, and in the financial instruments listed below in this section.

The Fund will be actively-managed through the selection, at any given time, of approximately 80-100 common stocks from the Index based on quantitative and qualitative factors, including an assessment of the following characteristics: cash flow return on invested capital; earnings quality and momentum; operational quality; corporate governance policies; and capital stewardship. The Fund may invest in such Index components by directly purchasing shares of common stock or investing in American

⁶ See Notice, *supra* note 3, 81 FR at 37223. The Exchange further represents that in the event (i) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (ii) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Exchange represents that such adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. See *id.*

⁷ The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in the Notice, Amendment No. 1, and the Registration Statement, as applicable. See Notice, Amendment No. 1, and Registration Statement, *supra* notes 3, 4, and 5, respectively.

⁸ The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. See Amendment No. 1, *supra* note 4 at 5-6.

¹⁹ 17 CFR 200.30-3(a)(12) and (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.