

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80936; File No. SR–IEX–2017–21]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of a Proposed Rule Change To Adopt Rule 15.130 To Establish the Procedures for Resolving Potential Disputes Related to CAT Fees Charged to Industry Members

June 15, 2017.

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 6, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) 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 Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),⁴ and Rule 19b–4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to adopt Rule 15.130 (Consolidated Audit Trail—Fee Dispute Resolution) to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.⁶ 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAx PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,⁷ NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.⁸ (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act⁹ and Rule 608 of Regulation NMS thereunder,¹⁰ the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).¹¹ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,¹² and approved by the Commission, as

⁷ ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

⁸ National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

⁹ 15 U.S.C. 78k–1.

¹⁰ 17 CFR 242.608.

¹¹ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

¹² Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

modified, on November 15, 2016.¹³ The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.¹⁴ Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).¹⁵ The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.¹⁶ Accordingly, IEX has filed a proposed rule change with the SEC to adopt the Consolidated Audit Trail Funding Fees, which will require Industry Members that are IEX members to pay the CAT Fees determined by the Operating Committee.¹⁷ IEX submits this rule filing to adopt Rule 15.130 (Consolidated Audit Trail—Fee Dispute Resolution) to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members. Proposed Rule 15.130 is described below.

(1) Definitions

Paragraph (a) of Proposed Rule 15.130 sets forth the definitions for Proposed Rule 15.130. Paragraph (a)(1) of Proposed Rule 15.130 states that, for purposes of Rule 15.130, the terms “CAT NMS Plan”, “Industry Member”, “Operating Committee”, and “Participant” are defined as set forth in the Rule 11.610 (Consolidated Audit Trail—Definitions), and the term “CAT Fee” is defined as set forth in the Consolidated Audit Trail Funding Fees. In addition, IEX proposes to add paragraph (a)(2) to Proposed Rule 15.130. New paragraph (a)(2) would define the term “Subcommittee” to mean a subcommittee designated by the

¹³ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

¹⁴ The Plan also serves as the limited liability company agreement for the Company.

¹⁵ Section 11.1(b) of the CAT NMS Plan.

¹⁶ *Id.*

¹⁷ See SR–IEX–2017–03 [sic] filed with the Commission on May 3 [sic], 2017.

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 Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, or in the Consolidated Audit Trail Funding Fees Rule, the CAT Compliance Rule Series or in the CAT NMS Plan.

Operating Committee pursuant to the CAT NMS Plan. This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan.

(2) Fee Dispute Resolution

Section 11.5 of the CAT NMS Plan requires Participants to adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to the CAT NMS Plan be determined by the Operating Committee or Subcommittee. Section 11.5 of the CAT NMS Plan also states that decisions by the Operating Committee or Subcommittee on such matters shall be binding on Industry Members, without prejudice to the right of any Industry Member to seek redress from the SEC pursuant to SEC Rule 608 or in any other appropriate forum. IEX proposes to adopt paragraph (b) of Proposed Rule 15.130. Paragraph (b) of Proposed Rule 15.130 states that disputes initiated by an Industry Member with respect to CAT Fees charged to such Industry Member pursuant to the Consolidated Audit Trail Funding Fees, including disputes related to the designated tier and the fee calculated pursuant to such tier, shall be resolved by the Operating Committee, or a Subcommittee designated by the Operating Committee, of the CAT NMS Plan, pursuant to the Fee Dispute Resolution Procedures adopted pursuant to the CAT NMS Plan and set forth in paragraph (c) of Proposed Rule 15.130. Decisions on such matters shall be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the SEC or in any other appropriate forum.

The Operating Committee has adopted "Fee Dispute Resolution Procedures" governing the manner in which disputes regarding CAT Fees charged pursuant to the Consolidated Audit Trail Funding Fees will be addressed. These Fee Dispute Resolution Procedures, as they relate to Industry Members, are set forth in paragraph (c) of Proposed Rule 15.130. Specifically, the Fee Dispute Resolution Procedures provide the procedure for Industry Members that dispute CAT Fees charged to such Industry Member pursuant to one or more of the Participants' Consolidated Audit Trail Funding Fees Rules, including disputes related to the designated tier and the fee calculated pursuant to such tier, to apply for an opportunity to be heard and to have the CAT Fees charged to such Industry Member reviewed. The Procedures are modeled after the adverse action procedures adopted by

various exchanges,¹⁸ and will be posted on the Web site for the CAT NMS Plan Web site.¹⁹

Under these Procedures, an Industry Member that disputes CAT Fees charged to such Industry Member and that desires to have an opportunity to be heard with respect to such disputed CAT Fees must file a written application with the Company within 15 business days after being notified of such disputed CAT Fees. The application must identify the disputed CAT Fees, state the specific reasons why the applicant takes exception to such CAT Fees, and set forth the relief sought. In addition, if the applicant intends to submit any additional documents, statements, arguments or other material in support of the application, the same should be so stated and identified.

The Company will refer applications for hearing and review promptly to the Subcommittee designated by the Operating Committee pursuant to Section 4.12 of the CAT NMS Plan with responsibility for conducting the reviews of CAT Fee disputes pursuant to these Procedures. This Subcommittee will be referred to as the Fee Review Subcommittee. The members of the Fee Review Subcommittee will be subject to the provisions of Section 4.3(d) of the CAT NMS Plan regarding recusal and Conflicts of Interest. The Fee Review Subcommittee will keep a record of the proceedings.

The Fee Review Subcommittee will hold hearings promptly. The Fee Review Subcommittee will set a hearing date. The parties to the hearing shall furnish the Fee Review Subcommittee with all materials relevant to the proceedings at least 72 hours prior to the date of the hearing. Each party will have the right to inspect and copy the other party's materials prior to the hearing.

The parties to the hearing will consist of the applicant and a representative of the Company who shall present the reasons for the action taken by the Company that allegedly aggrieved the applicant. The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceedings.

The Fee Review Subcommittee will determine all questions concerning the admissibility of evidence and will otherwise regulate the conduct of the hearing. Each of the parties will be permitted to make an opening

statement, present witnesses and documentary evidence, cross examine opposing witnesses and present closing arguments orally or in writing as determined by the Fee Review Subcommittee. The Fee Review Subcommittee also will have the right to question all parties and witnesses to the proceeding. The Fee Review Subcommittee must keep a record of the hearing. The formal rules of evidence will not apply.

The Fee Review Subcommittee must set forth its decision in writing and send the written decision to the parties to the proceeding. Such decisions will contain the reasons supporting the conclusions of the Fee Review Subcommittee.

The decision of the Fee Review Subcommittee will be subject to review by the Operating Committee either on its own motion within 20 business days after issuance of the decision or upon written request submitted by the applicant within 15 business days after issuance of the decision. The applicant's petition must be in writing and must specify the findings and conclusions to which the applicant objects, together with the reasons for such objections. Any objection to a decision not specified in writing will be considered to have been abandoned and may be disregarded. Parties may petition to submit a written argument to the Operating Committee and may request an opportunity to make an oral argument before the Operating Committee. The Operating Committee will have sole discretion to grant or deny either request.

The Operating Committee will conduct the review. The review will be made upon the record and will be made after such further proceedings, if any, as the Operating Committee may order. Based upon such record, the Operating Committee may affirm, reverse or modify, in whole or in part, the decision of the Fee Review Subcommittee. The decision of the Operating Committee will be in writing, will be sent to the parties to the proceeding and will be final.

The Procedures state that a final decision regarding the disputed CAT Fees by the Operating Committee, or the Fee Review Subcommittee (if there is no review by the Operating Committee), must be provided within 90 days of the date on which the Industry Member filed a written application regarding disputed CAT Fees with the Company. The Operating Committee may extend the 90-day time limit at its discretion.

In addition, the Procedures state that any notices or other documents may be served upon the applicant either personally or by leaving the same at its,

¹⁸ See, e.g., Chapter X of BATS BZX Exchange, Inc. (Adverse Action); and Chapter X of NYSE National, Inc. (Adverse Action).

¹⁹ The CAT NMS Plan Web site is www.catnmsplan.com.

his or her place of business or by deposit in the United States post office, postage prepaid, by registered or certified mail, addressed to the applicant at its, his or her last known business or residence address. The Procedures also state that any time limits imposed under the Procedures for the submission of answers, petitions or other materials may be extended by permission of the Operating Committee. All papers and documents relating to review by the Fee Review Subcommittee or the Operating Committee must be submitted to the Fee Review Subcommittee or Operating Committee, as applicable.

The Procedures also note that decisions on such CAT Fee disputes made pursuant to these Procedures will be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the SEC or in any other appropriate forum.

Finally, an Industry Member that files a written application with the Company regarding disputed CAT Fees in accordance with these Procedures is not required to pay such disputed CAT Fees until the dispute is resolved in accordance with these Procedures, including any review by the SEC or in any other appropriate forum. For these purposes, the disputed CAT Fees means the amount of the invoiced CAT Fees that the Industry Member has asserted pursuant to these Procedures that such Industry Member does not owe to the Company. The Industry Member must pay any invoiced CAT Fees that are not disputed CAT Fees when due as set forth in the original invoice.

Once the dispute regarding CAT Fees is resolved pursuant to these Procedures, if it is determined that the Industry Member owes any of the disputed CAT Fees, then the Industry Member must pay such disputed CAT Fees that are owed as well as interest on such disputed CAT Fees from the original due date (that is, 30 days after receipt of the original invoice of such CAT Fees) until such disputed CAT Fees are paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions Section 6(b)(5) of the Act,²⁰ which require, among other things, that the Exchange 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 not designed to permit unfair discrimination between customers, issuers, brokers and dealer [sic], and Section 6(b)(4) of the Act,²¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

IEX believes that this proposal is consistent with the Act because it implements, interprets or clarifies Section 11.5 of the Plan, and is designed to assist IEX and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²² To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, IEX believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 6(b)(8) of the Act²³ require [sic] that Exchange rules not impose any burden on competition that is not necessary or appropriate. 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 Section 11.5 of the CAT NMS Plan approved by the Commission, and is designed to assist IEX in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed rule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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–2017–21 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–2017–21. 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

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78f(b)(4).

²² Approval Order at 84697.

²³ 15 U.S.C. 78f(b)(8).

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-2017-21, and should be submitted on or before July 11, 2017.

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

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-12886 Filed 6-19-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934—Form TCR and Form WB-APP, OMB Control No. 3235-0686, SEC File No. 270-625.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit an extension for this current collection of information to the Office of Management and Budget for approval.

In Release No. 34-64545,¹ the Commission adopted rules (“Rules”) and forms to implement Section 21F of the Securities Exchange Act of 1934 entitled “Securities Whistleblower Incentives and Protection,” which was created by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The Rules describe the whistleblower program that the Commission has established pursuant to the Dodd-Frank Act which requires the Commission to pay an award, subject to certain

limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or of a related action. The Rules define certain terms critical to the operation of the whistleblower program, outline the procedures for applying for awards and the Commission’s procedures for making decisions on claims, and generally explain the scope of the whistleblower program to the public and to potential whistleblowers.

Form TCR is a form submitted by whistleblowers who wish to provide information to the Commission and its staff regarding potential violations of the securities laws. Form TCR is required for submission of information under the Rules. The Commission estimates that it takes a whistleblower, on average, one and one-half hours to complete Form TCR. Based on the receipt of approximately 700 annual responses on average for the past three fiscal years, the Commission estimates that the annual PRA burden of Form TCR is 1,050 hours.

Form WB-APP is a form that is submitted by whistleblowers filing a claim for a whistleblower award. Form WB-APP is required for application for an award under the Rules. The Commission estimates that it takes a whistleblower, on average, two hours to complete Form WB-APP. The completion time depends largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of his or her application for an award. Based on the receipt of approximately 150 annual responses on average for the past three fiscal years, the Commission estimates that the annual PRA burden of Form WB-APP is 300 hours. The total estimated annual reporting burden for Form TCR and Form WB-APP is 1,350 hours.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in

writing within 60 days of this publication. Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: June 15, 2017.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-12832 Filed 6-19-17; 8:45 am]

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, Pub. L. 94-409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, June 22, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Chairman Clayton, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

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 from the Office of the Secretary at (202) 551-5400.

Dated: June 15, 2017.

Brent J. Fields,
Secretary.

[FR Doc. 2017-12898 Filed 6-16-17; 11:15 am]

BILLING CODE 8011-01-P

²⁴ 17 CFR 200.30-3(a)(12).

¹ Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34-64545; File No. S7-33-10 (adopted May 25, 2011).

² Public Law 111-203, 922(a), 124 Stat 1841 (2010).