

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89466; File No. SR-IEX-2020-10]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule Series 11.600, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail to be Consistent With an Amendment Recently Approved by the Commission

August 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 31, 2020, 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 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 Exchange Act,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> IEX is filing with the Commission a proposed rule change to amend the Rule Series 11.600, the Exchange's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan")<sup>5</sup> to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.

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 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

The purpose of this proposed rule change is to amend the Rule Series 11.600, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.<sup>6</sup> The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the "FDID Amendment"). As a result, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.610 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 11.610(r) defines the term "Firm Designated ID" to mean "a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date."

###### (1) Prohibit Use of Account Numbers

The Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.610(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Exchange proposes to add the following to the definition of a Firm Designated ID: "Provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account."

###### (2) Persistent Firm Designated ID

The Exchange also proposes to amend the definition of "Firm Designated ID" in Rule 11.610(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.<sup>7</sup> To effect this change, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.610(r) to add "and persistent" after "unique" and delete "for each business date" so that the definition of "Firm Designated ID" would read, in relevant part, as follows: "A unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member."

###### (3) Relationship Identifiers

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (e.g., certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only

<sup>7</sup> If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

<sup>6</sup> Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register pending).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper subaccount(s), i.e., the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged

to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 11.610(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.610(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked."

#### (4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member's order handling and/or execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations.

However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.610(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 11.610(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination."

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>8</sup> which require, among other things, that the Exchange's 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>9</sup> which requires that the Exchange's rules not

<sup>8</sup> 15 U.S.C. 78f(b)(6).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, a recent amendment to the CAT NMS Plan, and is designed to assist the Exchange 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.”<sup>10</sup> To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange 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*

The Exchange 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 notes that the proposed rule changes are consistent with a recent amendment to the CAT NMS Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule

19b–4(f)(6) thereunder.<sup>12</sup> 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 prior to 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>13</sup> and Rule 19b–4(f)(6)(iii) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>15</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>16</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 by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.<sup>17</sup> Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.<sup>18</sup>

At any time within 60 days of the filing of this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

<sup>12</sup> 17 CFR 240.19b–4(f)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</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 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>15</sup> 17 CFR 240.19b–4(f)(6).

<sup>16</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>17</sup> See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has 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–2020–10 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–2020–10. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 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. 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–2020–10, and should be submitted on or before August 31, 2020.

<sup>19</sup> 17 CFR 200.30–3(a)(12).

<sup>10</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

**J. Matthew DeLesDernier,**  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89472; File No. SR-CboeBZX-2020-036]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Rule 14.11, Other Securities, To Modify a Continued Listing Criterion for Certain Exchange-Traded Products

August 4, 2020.

On April 29, 2020, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend one of the continued listing requirements relating to certain exchange-traded products (“ETPs”) under BZX Rule 14.11. The proposed rule change was published for comment in the **Federal Register** on May 7, 2020.<sup>3</sup>

On June 16, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission has received one comment letter on the proposed rule change.<sup>6</sup> The Commission is issuing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 88795 (May 1, 2020), 85 FR 27254 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 89076, 85 FR 37488 (June 22, 2020). The Commission designated August 5, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> Comments on the proposed rule change can be found on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebzx-2020-036/sr-cboebzx2020036.htm>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

## I. Description of the Proposal

A continued listing requirement for certain ETPs<sup>8</sup> currently provides that, following the initial 12-month period after commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, and will commence delisting proceedings under BZX Rule 14.12 for, shares of such ETPs for which there are fewer than 50 beneficial holders for 30 or more consecutive trading days (“Beneficial Holder Rule”). The Exchange is proposing to change the date after which an ETP must have at least 50 beneficial holders or be subject to delisting proceedings under BZX Rule 14.12 (“Non-Compliance Period”). Specifically, the Exchange seeks to extend the Non-Compliance Period from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange.

### A. The Exchange’s Rationale

The Exchange asserts that it would be appropriate to increase the Non-Compliance Period from 12 months to 36 months because: (1) It would bring the rule more in line with the life cycle of an ETP; (2) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest; and (3) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the continued listing standard is intended to address.

According to the Exchange, the ETP space is more competitive than it has ever been, with more than 2000 ETPs listed on exchanges. As a result, distribution platforms have become more restrictive about the ETPs they will allow on their systems, often requiring a minimum track record (e.g., twelve months) and a minimum level of assets under management (e.g., \$100 million). Many larger entities also require a one-year track record before they will invest in an ETP. In the Exchange’s view, this has slowed the growth cycle of the average ETP, with the result that the Exchange has seen a significant number of deficiencies with respect to the Beneficial Holders Rule over the last several years. Specifically, the Exchange notes that it has issued deficiency notifications to 34 ETPs for

<sup>8</sup> For purposes of the proposal, the term “ETP” means securities listed pursuant to BZX Rule 14.11(c) (Index Fund Shares), BZX Rule 14.11(i) (Managed Fund Shares), and BZX Rule 14.11(l) (Exchange-Traded Fund Shares (“ETF Shares”).

non-compliance with the Beneficial Holders Rule in the last five years, 27 of which ultimately were able to achieve compliance while going through the delisting process.

In addition, the Exchange believes that the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products with insufficient investor interest, and that the Beneficial Holders Rule has resulted in the forced termination of ETPs that issuers believed were still economically viable. The Exchange states that there are significant costs associated with the launch and continued operation of an ETP, and notes that the Exchange has had 69 products voluntarily delist in the last two years. The Exchange also questions whether the number of beneficial holders is a meaningful measure of market interest in an ETP, and believes that an ETP issuer is incentivized to have as many beneficial holders as possible.

Finally, the Exchange states that the proposal “does not create any significant change in the risk of manipulation for ETPs listed on the exchange.” The Exchange “does not believe there is anything particularly important about the 50th Beneficial Holder that reduces the manipulation risk associated with an ETP as compared to the 49th, nor is there any manipulation concern that arises on the 366th day after an ETP began trading on the Exchange that didn’t otherwise exist on the 1st, 2nd, or 365th day.”<sup>9</sup> The Exchange also states that it has in place a robust surveillance program for ETPs that it believes is sufficient to deter and detect manipulation and other violative activity, and that the Exchange (or the Financial Industry Regulatory Authority on its behalf) communicates as needed with other members of the Intermarket Surveillance Group. The Exchange believes that “these robust surveillance procedures will further act to mitigate concerns that arise from extending the compliance period for the Beneficial Holders [Rule] from 12 months to 36 months.”<sup>10</sup> Lastly, the Exchange takes the position that other continued listing standards (e.g., with respect to the diversity, liquidity and size of an ETP’s holdings or reference assets) “are generally sufficient to mitigate manipulation concerns associated with the applicable ETP.”<sup>11</sup>

<sup>9</sup> See Notice, *supra* note 3, 85 FR at 27256.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*