

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81872; File No. SR–IEX–2017–20]

Self-Regulatory Organizations; Investors Exchange LLC; Order Approving Proposed Rule Change To Adopt Rule 14.602 To Describe the Complimentary Products and Services To Be Made Available to All Listed Companies

October 13, 2017.

I. Introduction

On August 10, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to adopt Rule 14.602 to describe the complimentary products and services to be made available to all listed companies. The proposed rule change was published for comment in the *Federal Register* on August 29, 2017.³ No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange has proposed to adopt Rule 14.602 to describe the complimentary products and services that will be offered to all listed companies pursuant to a listing program that the Exchange intends to begin in 2017.⁴

In particular, the Exchange has proposed to provide all listed companies with the same optional complimentary services through access to IEX Issuer, a market information analytics platform consisting of access to a team of market professionals and web-based content.⁵ As described by the Exchange in its proposal, the team of market professionals will provide market intelligence, fundamental and technical trading analysis, and real-time market information to all listed companies.⁶ The Exchange also stated that the web-based portion of IEX Issuer will provide similar information that will enable all listed companies to follow their stock’s trading, competitors, and market activity through an online

interface.⁷ Further, IEX noted that IEX Issuer may, from time to time, provide information about products and services from third-party vendors that IEX determines may be relevant to listed issuers, without any subsidy or other involvement by the Exchange for such products and services.⁸ The proposed rule text states that the Exchange will provide a description of all products and services available through IEX Issuer on its Web site.⁹

The Exchange represented in its proposal that all issuers listed on the Exchange will have access to services through IEX Issuer on the same basis and that the Exchange will not be proposing to offer any additional products and services to listed companies on a tiered or differentiated basis.¹⁰

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.¹¹ Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)¹² and 6(b)(5) of the Act¹³ in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange’s facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act¹⁴ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change, which would permit the Exchange to provide complimentary products and services to all listed companies through IEX Issuer, as described above,¹⁵ is appropriate and consistent with the Act. The

Commission believes that by describing in its Rules the products and services available to listed companies, the Exchange is adding greater transparency to its rules and the fees applicable to such companies.¹⁶ This will help to ensure that individual listed companies are not given specially negotiated packages of products and services to list or remain listed that would raise unfair discrimination issues under the Act.

The Commission notes that all listed companies will receive access to the same services on the same basis without any differentiation and the Exchange is not proposing to offer any additional products and services to listed companies on a tiered or differentiated basis. Accordingly, the Commission believes that the proposed rule change is consistent with the requirements of the Act and, in particular, that the products and services are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.

As described above, the Exchange will provide all of the products and services and will separately provide information about additional products and services available from third-party vendors that IEX determines may be relevant to listed issuers. As noted by the Exchange in its proposal, listed companies may elect to purchase products and services from other vendors, or not to use any such products and services, rather than accepting the products and services offered by the Exchange.¹⁷ The Exchange stated that the provision of any products and services from a third-party vendor would need to be effected through arrangements directly between the listed issuer and the third-party vendor, without any subsidy or other involvement by the Exchange.¹⁸ The Exchange further stated that it does not have exclusive arrangements with third-party vendors with respect to any optional access to discounted products and services from third-party vendors.¹⁹ The Exchange has represented that listed companies will not be required to accept any discounted products and

⁷ See Notice, *supra* note 3, at 41078.

⁸ See proposed Rule 14.602. The provision of any products and services from a third-party vendor would need to be effected through arrangements directly between the listed issuer and the third-party vendor, without any subsidy or other involvement by the Exchange. *See id.*

⁹ *See id.*

¹⁰ See Notice, *supra* note 3, at 41078.

¹¹ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ *See supra* notes 5–7 and accompanying text.

¹⁶ The Commission views complimentary products and services provided by exchanges to listed companies as a discount on the ultimate listing fees paid by such companies. *See, e.g.,* Securities Exchange Act Release Nos. 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (order approving SR–NYSE–2011–20) and 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (order approving SR–NASDAQ–2011–122).

¹⁷ *See* Notice, *supra* note 3, at 41079.

¹⁸ This representation is also specifically set forth in the proposed rule text.

¹⁹ *See* Notice, *supra* note 3, at 41079.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ *See* Securities Exchange Act Release No. 81469 (August 23, 2017), 82 FR 41077 (“Notice”).

⁴ *See id.* at 41078.

⁵ *See* proposed Rule 14.602.

⁶ *See id.*

services as a condition to listing.²⁰ The Commission believes that these representations should additionally help to ensure that individual listed companies are not given specially negotiated deals, through Exchange subsidized discounts on products and services from third-party vendors, to list or remain listed that would raise unfair discrimination issues under the Act .

The Commission believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. Specifically, the Exchange stated in its proposal that it expects to face competition as a new entrant in the market for exchange listings and that it believes the complimentary products and services that it offers to listed companies will facilitate its ability to attract and retain listings.²¹ In particular, the Exchange states that it expects to face significant competition from the New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) for listings, both of which offer complimentary products and services to listed companies.²² Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.²³

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-IEX-2017-20), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81871; File No. SR-DTC-2017-018]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the DTC Distributions Guide Relating to Announcements and Tax Treatment of Certain Corporate Action Events and To Amend the DTC Fee Schedule

October 13, 2017.

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 October 2, 2017, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rules 19b-4(f)(2) and (f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ would (i) revise the Distributions Guide to (A) enhance the DTC Announcements feature (“Announcements”) within the DTC Distributions Service (“Distributions Service”) ⁶ by adding new corporate action events that do not involve the payment of funds or distribution of Securities through DTC, but which may result in a taxable event for holders (“Tax Event”), as a type of distribution covered by Announcements (“Distribution Event”) ⁷ and (B) make

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)(2) and (f)(4).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the “DTC Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx> and the DTC Distributions Service Guide (“Distributions Guide”), available at <http://www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf>.

⁶ The Distributions Service includes DTC’s announcement, collection, allocation and reporting of dividend, interest and certain principal payments on behalf of Participants holding Securities at DTC. See Distributions Guide, *supra* note 1 at 9.

⁷ Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depository receipts, return of capital, dividend with option,

technical and conforming changes relating to U.S. tax withholding and information reporting performed by DTC with respect to Tax Events; and (ii) add a fee relating to the announcement of Tax Events (“New Fee”) to the DTC Fee Schedule (“Fee Schedule”),⁸ as discussed below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would (i) revise the Distributions Guide to (A) enhance Announcements by adding Tax Events as a Distribution Event and (B) make technical and conforming changes relating to U.S. tax withholding and information reporting performed by DTC with respect to Tax Events; and (ii) add the New Fee to the Fee Schedule, as discussed below.

A. Distributions Service Announcements Feature

The Distributions Service includes the announcement, collection, allocation and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC. This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on Distribution Events, from multiple issuers and agents.⁹ In this regard, Announcements provides Participants with information pertaining to their record date (“Record Date”) ¹⁰ positions for Distribution Events.¹¹ This

stock splits, stock dividends, automatic dividend reinvestments, spinoffs, rights distributions, pay in kind, and liquidation. Distributions Guide, *supra* note 1 at 12.

⁸ Available at <http://www.dtcc.com/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf?la=en>.

⁹ See Distributions Guide, *supra* note 5 at 9.

¹⁰ The Record Date is the date set by an issuer of a security by which an investor must own the security in order to be eligible to receive an upcoming distribution.

¹¹ See Distributions Guide, *supra* note 5 at 11-13.

²⁰ See *id.*

²¹ See *id.* at 41078.

²² See *id.* See also Section 907.00 of the NYSE Listed Company Manual and Nasdaq Rule IM-5900-7.

²³ 15 U.S.C. 78f(b)(8).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).