

**SECURITIES AND EXCHANGE  
COMMISSION****Sunshine Act Meetings**

**TIME AND DATE:** 12:00 p.m. on Friday, December 1, 2017.

**PLACE:** Closed Commission Hearing Room 10800.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

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.

Commissioner Stein, 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;

Adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:**

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: November 22, 2017.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2017-25701 Filed 11-22-17; 4:15 pm]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-82127; File No. SR-IEX-2017-40]

**Self-Regulatory Organizations;  
Investors Exchange LLC; Notice of  
Filing and Immediate Effectiveness of  
Proposed Rule Change To Modify Its  
Fee Schedule, Pursuant to IEX Rule  
15.110(a) and (c), To Adopt Pricing for  
Orders That Execute in an IEX Auction  
for IEX-Listed Securities**

November 20, 2017.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on (date), the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III 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) under the Securities Exchange Act of 1934 (“Act”), <sup>4</sup> and Rule 19b-4 thereunder, <sup>5</sup> IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to adopt pricing for orders that execute in an IEX Auction <sup>6</sup> for IEX-listed securities pursuant to Rule 11.350. Changes to the Fee Schedule pursuant to this proposal are effective upon filing, and will be operative once the Exchange begins conducting IEX Auctions in IEX-listed securities. <sup>7</sup> The text of the proposed rule change is available at the Exchange's Web site at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> IEX Auctions include the daily Opening and Closing Auctions (Rule 11.350(c) and (d), respectively), as well as IPO Auctions related to an initial public offering of securities (Rule 11.350(e)), Halt Auctions following a regulatory halt (Rule 11.350(e)), and Volatility Auctions following a trading pause pursuant to the Limit Up-Limit Down Plan (Rule 11.350(f)).

<sup>7</sup> See IEX Trader Alert #2017-015, available on the Exchange public Web site.

**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 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**

On August 10, 2017, the Commission approved a proposed rule change by the Exchange to adopt rules governing auctions, including dissemination of auction-related market data, for securities listed on the Exchange pursuant to Chapter 14 of the IEX Rule Book. <sup>8</sup> The Exchange proposes to update its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to add new Fee Codes to identify the fees applicable to orders that execute in IEX Auctions. The IEX Auction processes are designed to maximize participation in the auctions in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price. The Exchange believes that fees are an important component of the IEX Auction processes, in that execution fees can influence the trading behavior of Members by creating economic incentives (and disincentives) for Members that participate in IEX Auctions. Thus, the Exchange is proposing fees that are similarly designed to incentivize participation in IEX Auctions in order to further support an efficient price discovery process and greater opportunity for execution at the official auction price.

The Exchange proposes to apply the following new Fee Codes:

- Executions in the Opening Auction <sup>9</sup> will receive Fee Code “O”
- Executions in the Closing Auction <sup>10</sup> will receive Fee Code “C”

<sup>8</sup> See Securities and Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017) (SR-IEX-2017-10).

<sup>9</sup> See Rule 11.350(c).

<sup>10</sup> See Rule 11.350(d).

- Executions in a Halt Auction<sup>11</sup> or Volatility Auction<sup>12</sup> will receive Fee Code “H”
- Executions in an IPO Auction<sup>13</sup> will receive Fee Code “N”

As proposed, non-displayed orders on the Continuous Book<sup>14</sup> that are executed in an IEX Auction will receive the applicable auction Fee Code on their execution reports and will be subject to a fee of \$0.0003 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00) (the “Auction Match Fee”). Furthermore, all orders on the Auction Book<sup>15</sup> that are executed in an IEX Auction will receive the applicable auction Fee Code on their execution reports and will also be subject to the Auction Match Fee of \$0.0003 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00).

The Exchange believes that the proposed Auction Match Fee for non-displayed orders on the Continuous Book and all orders on the Auction Book that are executed in an IEX Auction are designed to incentivize participation in IEX Auctions by providing a cost-effective execution mechanism that offers Members an opportunity to receive executions at the official opening, re-opening, or closing price of an IEX-listed security. The Exchange believes the proposed fees enhance the price discovery process by incentivizing Members to enter interest in IEX-listed securities into IEX Auctions, rather than investing resources into developing and maintaining their own off-exchange

internalization mechanisms, or utilizing the internalization mechanisms of competing brokers and alternative trading systems, and entering only the balance to participate in an IEX Auction.<sup>16</sup> The Exchange believes incentivizing broader participation will increase overall liquidity in the IEX Auctions, and enhance the price discovery process, particularly in the Opening and Closing Auctions, which provide a critical price discovery mechanism to establish the official opening and closing prices for IEX-listed securities at the start and end of each trading day.

Moreover, orders that were displayed on the Continuous Book during the Pre-Market Session<sup>17</sup> or Regular Market Session<sup>18</sup> that are executed in the Opening Auction or Closing Auction, respectively, will receive the applicable auction Fee Code, as well as existing Fee Code L (Displayed Match Fee).<sup>19</sup> Thus, such orders will not be charged a fee because, pursuant to the IEX Fee Schedule, to the extent a Member receives multiple Fee Codes on an

<sup>16</sup> See, e.g., Exhibit F of Instinet LLC’s Form ATS, which describes its MOC Crosses that match buy and sell orders for certain U.S. equity securities marked “market on close”. See also, Table 6 in Appendix A of Bats BZX Exchange’s (“Bats”) response letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, to Secretary Brent J. Fields, dated August 2, 2017, in support of the proposed Bats Market Close. Table 6 illustrates significant volume in shares of FedEx, Proctor & Gamble, and Cardinal Health that was executed at the official closing price at off exchange venues. See Securities and Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-BatsBZX-2017-34).

<sup>17</sup> See Rule 1.160(z).

<sup>18</sup> See Rule 1.160(gg).

<sup>19</sup> The Exchange currently does not charge any fee to Members for executions on IEX that provide or take resting interest with displayed priority (*i.e.*, an order or portion of a reserve order that is booked and ranked with display priority on the Order Book either as the IEX best bid or best offer (“BBO”), or at a less aggressive price). This pricing is referred to by the Exchange as “Displayed Match Fee” with a Fee Code of ‘L’ provided by the Exchange on execution reports. See the Investors Exchange Fee Schedule, available on the Exchange public Web site.

execution, the lower fee shall apply.<sup>20</sup> As with the existing fee structure for execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery leading into IEX Auctions.

The Exchange notes that the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity,<sup>21</sup> and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry,<sup>22</sup> are not applicable to IEX Auctions. IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers, rendering the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity, and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry, inapplicable.

The following table is designed to illustrate the various Fee Codes and execution fees that will be applied to orders that may be executed in an IEX Auction:

<sup>20</sup> See IEX Fee Schedule, Transaction Fees, bullet three. The Exchange also notes that there is no Continuous Book prior to a Halt, Volatility, or IPO auction, and thus no opportunity for a Member to have a displayed order on the Continuous Book that is executed in such auctions.

<sup>21</sup> See *supra* note 19.

<sup>22</sup> The Exchange does not charge any fee to Members (on a per MPID basis) for executions on IEX that remove resting interest with non-displayed priority where (i) the liquidity removing order was displayable (*i.e.*, the order would have booked and displayed if posted to the Order Book), and (ii) on a monthly basis, at least 90% of the liquidity removing MPID’s aggregate executions of displayable orders provided liquidity during such calendar month. In such transactions, the liquidity providing non-displayed interest is subject to the Non-Displayed Match Fee.

<sup>11</sup> See Rule 11.350(e).

<sup>12</sup> See Rule 11.350(f).

<sup>13</sup> See Rule 11.350(e).

<sup>14</sup> See Rule 11.350(a)(4).

<sup>15</sup> See Rule 11.350(a)(1).

| Order details  | Opening auction | Closing auction | Halt/volatility auction | IPO auction          | Fee for executions >=\$1.00 | Fee for executions <\$1.00   |
|--|-----------------|-----------------|-------------------------|----------------------|-----------------------------|------------------------------|
| Non-displayed orders resting on the Continuous Book that execute in the Opening or Closing Auction <sup>23</sup> . | O .....         | C .....         | Not applicable .....    | Not applicable ..... | \$0.0003 .....              | 0.30% of TDVT. <sup>24</sup> |
| Displayed orders resting on the Continuous Book that execute in the Opening or Closing Auction.                    | O, L .....      | C, L .....      | Not applicable .....    | Not applicable ..... | FREE .....                  | FREE.                        |
| All orders on the Auction Book that execute in an IEX Auction.   | O .....         | C .....         | H .....                 | N .....              | \$0.0003 .....              | 0.30% of TDVT                |

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>25</sup> of the Act in general, and furthers the objectives of Sections 6(b)(4)<sup>26</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

IEX believes that its proposed pricing for orders executed in an IEX Auction is reasonable and equitable because, as discussed above, the proposed fees are designed to incentivize participation in IEX Auctions by providing a cost-effective execution mechanism that offers Members an opportunity to receive executions at the official opening, re-opening, or closing price of an IEX-listed security. The Exchange believes the proposed fees may also incentivize Members to enter more interest into IEX Auctions, rather than investing resources into developing and maintaining their own off-exchange internalization mechanisms, or utilizing the internalization mechanisms of competing brokers and alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. However, in the case of auctions, the primary listing market receives the majority of order flow seeking execution

at the official opening, re-opening, and closing prices of its listed securities, because such price is generally established by its auction processes. As a result, the Exchange believes that, to date, the Nasdaq Stock Market (“Nasdaq”) and the New York Stock Exchange (“NYSE”) charge auction fees that are considerably higher than those charged during continuous trading, when accounting for the fact that fees for executions in the auction processes are assessed on both sides of each transaction, and a large portion of the fees collected for removing liquidity during continuous trading are largely earmarked to pay rebates to liquidity providers.<sup>27</sup> Consequently, the Exchange believes there is considerable demand from market participants seeking an alternative to the primary market’s auction processes, as evidenced by the recent proposal from Bats BZX Exchange, Inc. (“Bats”) to offer a closing process to match orders in non-listed securities at the official closing price published by the primary listing market (the “Bats Market Close”).<sup>28</sup> Therefore, the Exchange has designed its proposed fees to meet the demands of market participants by

offering competitive pricing to compete for auction order flow with trading centers such as Bats (if the Bats Market Close is approved), as well as other off-exchange facilities.<sup>29</sup>

As discussed above, IEX also believes that it is appropriate, reasonable, and consistent with the Act not to charge a fee for an order executed in an IEX Auction that was displayed on the Continuous Book prior to the Opening or Closing Auction. As with the existing fee structure for the execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery, consistent with the overall goal of enhancing market quality. IEX believes that, as with the existing Displayed Match Fee, not charging a fee for the execution of a previously displayed order is equitable and not unfairly discriminatory because it is designed to facilitate the entry of, and enhance execution opportunities for, displayable orders, thereby further incentivizing entry of displayed orders.

Furthermore, the Exchange notes that the proposed fees are nondiscriminatory because they will apply uniformly to all Members, and all Members have an equal opportunity to submit any type of Auction Eligible Order,<sup>30</sup>—including both displayed and non-displayed orders on the Continuous Book, or orders that queue on the Auction Book—for execution in an IEX Auction, using the order types made available to all Members on a fair and equal basis. In addition, the Exchange believes that the proposed fees for IEX Auctions are appropriate, reasonable, and consistent with the Act, because such fees are within the range of transaction fees charged by other exchanges for their

<sup>23</sup> The Exchange notes that non-displayed orders resting on the Continuous Book that execute in the auction will no longer receive Fee Code “I”, and will instead receive the applicable auction Fee Code. Orders taking or adding non-displayed liquidity prior to or after an IEX Auction, will continue to receive Fee Code I, either alone or in conjunction with other applicable Fee Codes.

<sup>24</sup> “TDVT” means the total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction. See IEX Fee Schedule, Definitions, bullet five.

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(4).

<sup>27</sup> For example, the Nasdaq Stock Market charges fees ranging between \$0.0008–\$0.0016 for orders executed in the Nasdaq Closing Cross, resulting in net fee capture ranging between \$0.0016–\$0.0032 per share executed. In contrast, during continuous trading, Nasdaq pays rebates ranging between \$0.0015–\$0.00305 to liquidity providing orders, and charges a fee of \$0.0030 to liquidity taking orders, resulting in net fee capture ranging between –\$0.00005–\$0.0015 per share executed. Similarly, NYSE charges fees ranging between \$0.0008–\$0.0011 for MOC and LOC orders executed in the NYSE Closing Auction, resulting in net fee capture ranging between \$0.0016 and \$0.0022 per share executed. In contrast, during continuous trading, NYSE pays a rebate ranging between \$0.0010–\$0.0022 to liquidity providing orders for non-market makers and non-Supplemental Liquidity providers, and assuming a member qualifies for the highest removal tier, NYSE charges \$0.00275 to liquidity taking orders, resulting in net fee capture ranging between \$0.00055–\$0.00175 per share executed.

<sup>28</sup> See Securities and Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR–BatsBZX–2017–34).

<sup>29</sup> See *supra* note 16.

<sup>30</sup> See Rule 11.350(a)(2).

respective Auction processes.<sup>31</sup> Furthermore, although orders that execute in IEX Auctions may be subject to different fees than similar orders executed during continuous trading, the Exchange notes that other exchanges also charge differential pricing for orders that execute in their opening process.<sup>32</sup> Moreover, as described above, the Exchange believes the proposed fees for orders executed in an IEX Auction are appropriate, reasonable, and consistent with the Act, because such fees are designed to incentivize participation in IEX Auctions, in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price.

Additionally, the Exchange believes that its proposed Fee Codes for orders executed in an IEX Auction, which will be provided on execution reports, will provide transparency and predictability to Members as to the applicable transaction fees, because Members can determine which Fee Code is applicable to the execution of a particular order in an IEX Auction.

As discussed above, the Exchange does not believe that it is appropriate to provide the Internalization Fee, or the Displayed Match Fee to non-displayed orders that execute in an IEX Auction, because IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers. Similarly, the Exchange does not believe that the exception to the Non-Displayed Match Fee for displayable orders that take resting interest upon entry is applicable in the context of an IEX Auction, since such orders are not able to remove resting interest on entry in an IEX Auction, because they are either queued on the Auction Book and not displayed, or resting displayed on the Continuous Book.<sup>33</sup> Moreover, as noted above, the IEX Auctions are an aggregated match process where only the cumulative

volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers, or their respective display status on the Auction Book.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, 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. Further, IEX believes that its proposal does not raise any new or novel issues that have not previously been considered by the Commission when approving the existing IEX fees, or the auction fees of other national securities exchanges.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and draw additional volume to the Exchange for IEX Auctions. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition between Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed in some circumstances, these different fees are not based on the type of Member entering the orders that execute in an IEX Auction, but based on the type of order entered, and all

Members can submit any of IEX's permissible order types.

#### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>34</sup> of the Act.

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)<sup>35</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-40 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2017-40. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>31</sup> For example, the Nasdaq Stock Market charges fees ranging from \$0.00085–\$0.0015 for orders executed in the Nasdaq Opening Cross, including capping such fees at \$35,000 per month for certain members, which includes crosses for listed and non-listed securities. Similarly, NYSE charges fees ranging from \$0 for closing off-set orders and orders on the continuous book that are executed in the auction, to \$0.0011 for MOC and LOC orders (for members that don't qualify for MOC/LC Tier 1 or 2).

<sup>32</sup> See *id.*

<sup>33</sup> The Exchange notes that it is of course possible for a displayed order to remove non-displayed liquidity during continuous trading on the Continuous Book; however, such execution would not be part of an IEX Auction, and would be subject to the Exchange's existing Fee Schedule.

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>35</sup> 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at [www.iextrading.com](http://www.iextrading.com). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-40 and should be submitted on or before December 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25471 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32900; 812-14799]

### New Mountain Finance Corporation, et al.

November 20, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of application for an order ("Order") to amend a prior order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and under rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain business development companies (each, a "BDC") and certain closed-end investment companies to co-invest in portfolio companies with each other and

with affiliated investment funds. The Order would supersede the prior order.<sup>1</sup>

**APPLICANTS:** New Mountain Finance Corporation ("NMFC"); NMF Ancora Holdings, Inc., NMF QID NGL Holdings, Inc., and NMF YP Holdings, Inc. (collectively, the "NMFC Subsidiaries"); New Mountain Finance SBIC, L.P. ("SBIC LP"); New Mountain Net Lease Corporation ("NMNLC"); New Mountain Guardian Partners II, L.P. ("Guardian II"); New Mountain Guardian II Master Fund-A, L.P. ("Guardian II Master A"); New Mountain Guardian II Master Fund-B, L.P. ("Guardian II Master B," and together with Guardian II and Guardian II Master A, the "Guardian II Funds"); and New Mountain Finance Advisers BDC, L.L.C. (the BDC Adviser") on behalf of itself and its successors.<sup>2</sup>

**FILING DATES:** The application was filed on July 10, 2017 and amended on October 31, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549-1090. Applicants: Robert A. Hamwee, New Mountain Finance Corporation, 787 Seventh Avenue, 48th Floor, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551-6990 or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the

application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. NMFC, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.<sup>3</sup> Applicants state that NMFC's Objectives and Strategies<sup>4</sup> are to generate both current income and capital appreciation through the sourcing and origination of debt securities at all levels of the capital structure, including first and second lien debt, notes, bonds and mezzanine securities. The board of directors ("Board") of NMFC is comprised of seven directors, four of whom are not "interested directors" as defined in section 2(a)(19) of the Act ("Non-Interested Directors"), of NMFC.

2. The NMFC Subsidiaries are Wholly-Owned Investment Subs (as defined below) of NMFC, each structured as a Delaware corporation to hold equity or equity-like investments in portfolio companies organized as limited liability companies or other forms of pass-through entities. The NMFC Subsidiaries are not registered under the Act in reliance on the exclusion from the definition of "investment company" in section 3(a)(7) of the Act.

3. SBIC LP, a Wholly-Owned Investment Sub of NMFC, is structured as a Delaware limited partnership. SBIC LP received a license from the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBA Act") as a small business investment company (each such licensed entity, a "SBIC Subsidiary").

4. NMNLC, a Maryland corporation, is a Wholly-Owned Investment Sub of NMFC. NMNLC was formed to acquire real properties that are subject to "triple net" leases and will qualify as a real

<sup>3</sup> Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>4</sup> "Objectives and Strategies" means a Regulated Fund's investment objectives and strategies as described in the Regulated Fund's registration statement on Form N-2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the "Securities Act"), or the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

<sup>1</sup> New Mountain Finance Corporation, et al., Investment Company Act Rel. Nos. 32630 (May 8, 2017) (notice) and 32668 (Jun. 5, 2017).

<sup>2</sup> The term "successor," means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

<sup>36</sup> 17 CFR 200.30-3(a)(12).