

Dated: April 7, 2022.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94641; File No. SR-  
NYSEAMER-2022-18]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extend the Current Pilot Program Related to Rule 7.10E

April 7, 2022.

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 April 5, 2022, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “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

The Exchange proposes to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on July 20, 2022. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.<sup>4</sup> In 2013, the Exchange adopted a provision designed to address the operation of the Plan.<sup>5</sup> Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.<sup>6</sup>

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down Plan” or “LULD Plan”),<sup>7</sup> including any extensions to the pilot period for the

LULD Plan.<sup>8</sup> In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.<sup>9</sup> In light of that change, the Exchange amended Rule 7.10E to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.<sup>10</sup> The Exchange later amended Rule 7.10E to extend the pilot’s effectiveness to the close of business on April 20, 2020,<sup>11</sup> October 20, 2020,<sup>12</sup> April 20, 2021,<sup>13</sup> October 20, 2021,<sup>14</sup> and April 20, 2022.<sup>15</sup>

The Exchange now proposes to amend Rule 7.10E to extend the pilot’s effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.<sup>16</sup> In such an event, the remaining sections of Rule 7.10E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (“FINRA”) will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10E.

The Exchange does not propose any additional changes to Rule 7.10E. Extending the effectiveness of Rule 7.10E for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further

<sup>8</sup> See Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR-NYSEMKT-2014-28).

<sup>9</sup> See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

<sup>10</sup> See Securities Exchange Act Release No. 85563 (April 9, 2019), 84 FR 15241 (April 15, 2019) (SR-NYSEAMER-2019-11).

<sup>11</sup> See Securities Exchange Act Release No. 87354 (October 18, 2019), 84 FR 57139 (October 24, 2019) (SR-NYSEAMER-2019-44).

<sup>12</sup> See Securities Exchange Act Release No. 88589 (April 8, 2020), 85 FR 20769 (April 14, 2020) (SR-NYSEAMER-2020-22).

<sup>13</sup> See Securities Exchange Act Release No. 90154 (October 13, 2020), 85 FR 66376 (October 19, 2020) (SR-NYSEAMER-2020-73).

<sup>14</sup> See Securities Exchange Act Release No. 91552 (April 14, 2021), 86 FR 20583 (April 20, 2021) (SR-NYSEAMER-2021-19).

<sup>15</sup> See Securities Exchange Act Release No. 93356 (October 15, 2021), 86 FR 58345 (October 21, 2021) (SR-NYSEAMER-2021-41).

<sup>16</sup> See supra notes 4-6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

<sup>4</sup> See Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR-NYSEAMER-2010-60).

<sup>5</sup> See Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR-NYSEMKT-2013-11).

<sup>6</sup> See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR-NYSEMKT-2014-37).

<sup>7</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

<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.

amendments to the clearly erroneous execution rules are appropriate.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>17</sup> in general, and Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10E for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution

pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## 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>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</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 and Rule 19b-4(f)(6)(iii) thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>22</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>23</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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 Commission has waived the five-day pre-filing requirement in this case.

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

proposed rule change as operative upon filing.<sup>24</sup>

At any time within 60 days of the filing of such 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>25</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-NYSEAMER-2022-18 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-NYSEAMER-2022-18. 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

<sup>24</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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-NYSEAMER-2022-18 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94630; File No. SR-IEX-2022-02]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule To Adopt Market Data Fees

April 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 1, 2022, 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 Exchange. 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 Act,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> the Exchange is filing with the Commission a proposed rule

change to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to assess fees for receipt of its proprietary market data feeds. IEX intends to implement the proposed fees beginning on July 1, 2022, to provide an opportunity for subscribers to update their data subscriptions to suit their particular market data needs.

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 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

IEX is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to assess fees for receipt of its proprietary market data feeds.

###### Background

IEX previously filed a proposal to charge market data fees on November 1, 2021, with the proposed fee changes effective on filing but not operative until January 3, 2022 ("First Fee Filing").<sup>5</sup> The First Fee Filing was published for comment in the **Federal Register** on November 17, 2021.<sup>6</sup> The Commission received no comments on the First Fee Filing before December 30, 2021. On that date, the Commission suspended the First Fee Filing and requested public comment and additional information on various aspects of the First Fee Filing.<sup>7</sup> To date, the Commission has received four comment letters in response to its Suspension Order, none of which stated that the First Fee Filing should not be

approved by the Commission.<sup>8</sup> Generally, the letters either commended IEX for the level of transparency raised in its rule filing and offered support for approval, or raised issues which are irrelevant to the consideration of IEX fees. As described more fully below, this filing provides additional transparency in support of IEX's proposed approach to charging for proprietary market data, as well as providing additional data and information included in the Commission's requests for comments in the Suspension Order.

The Exchange withdrew the First Fee Filing on April 1, 2022 and now submits this proposal for immediate effectiveness ("Second Fee Filing"), with a scheduled implementation date of July 1, 2022. This Second Fee Filing revises the fees proposed in the First Fee Filing to remove the proposed redistribution fees<sup>9</sup> and provide additional clarity regarding how the fees apply to affiliated market data subscribers. Further, as discussed below, in connection with the First Fee Filing, IEX obtained feedback from some current market data subscribers with respect to their anticipated plans with respect to IEX's fee liable market data products (*i.e.*, products for which IEX would charge a fee) which was not available at the time of filing of the First Fee Filing. This feedback enables IEX to supplement this Second Fee Filing with additional details relevant to its revenue projections. Additionally, this filing responds to various questions and requests for information contained in the Suspension Order.

As explained in the First Fee Filing, IEX's proposed market data fees were derived based on IEX's costs to produce the market data products to which the fees apply and applying a reasonable markup over those costs (*i.e.*, a "cost-plus model"). Further, as discussed more fully below, the proposed allocation of these fees to the two market data products is informed by the extent to which demand for each product drives IEX's overall market data costs and the different uses of the products by different types of participants.

<sup>8</sup> See January 27, 2022 letter from Erika Moore (Nasdaq Vice President and Corporate Secretary), January 26, 2022 letter from Tyler Gellasch (Executive Director, Healthy Markets Association), January 26, 2022 letter from Douglas Cifu (CEO, Virtu Financial, Inc.), and February 28, 2022 letter from Hope M. Jarkowski (General Counsel, New York Stock Exchange Group, Inc.). The comment letters are accessible at: <https://www.sec.gov/comments/sr-iex-2021-14/sriex202114.htm>.

<sup>9</sup> IEX determined not to propose a redistribution fee in this Second Fee Filing (referred to as distribution fees in the fee schedule proposed in the First Fee Filing) because of challenges allocating costs directly to redistribution by a Data Subscriber.

<sup>26</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> See Securities Exchange Act Release No. 93557 (November 10, 2021), 86 FR 64268 (November 17, 2021) (SR-IEX-2021-14).

<sup>6</sup> See *supra* note 3.

<sup>7</sup> See Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR-IEX-2021-14) ("Suspension Order").