

Section 17A(b)(3)(F) of the Act¹² and Rule 17Ad-22(e)(3)(ii).¹³

It is therefore ordered pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-ICC-2023-007), be, and hereby is, approved.¹⁵

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98063; File No. SR-IEX-2023-08]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Pursuant to IEX Rule 15.110 To Amend IEX's Fee Schedule

August 4, 2023.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act"),² and Rule 19b-4 thereunder,³ notice is hereby given that on July 25, 2023, 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 and II 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,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members⁶ (the "Fee Schedule") pursuant to IEX Rule 15.110(a) and (c), to modify the fees applicable to executions of and with

displayed orders for securities priced at or above \$1.00 per share. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁷ and will be operative on September 1, 2023.

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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 Exchange 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

The Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to modify the fees applicable to executions of and with displayed orders with an execution price at or above \$1.00 per share. The Exchange currently does not charge Members a fee for an execution at or above \$1.00 per share that provides displayed liquidity and charges Members \$0.0009 per share for an execution at or above \$1.00 per share that removes displayed liquidity.⁸

As proposed, for executions at or above \$1.00 per share, Members that enter displayed orders that provide liquidity will receive a rebate of \$0.0004 per share and Members that enter orders that remove displayed liquidity will be charged a fee of \$0.0010 per share, unless a lower fee applies.⁹ The proposed fee change would also apply to executions when the adding and removing orders originated from the same Member.

The Exchange provides the following Fee Codes on execution reports to Members for executions of and with

displayed liquidity: "ML" for orders that provide displayed liquidity, "MLS" for orders that provide displayed liquidity that executes against an order that originated from the same Member, "TL" for orders that remove displayed liquidity, and "TLS" for orders that remove displayed liquidity added by the same Member.¹⁰ These existing Fee Codes will continue to apply.

Specifically, the Exchange is proposing to make the following changes to its Fee Schedule:

- Replace the words "Effective January 2, 2023" at the top of the Fee Schedule with the words "Effective July 25, 2023" and on the line immediately after, add "New underlined text and deletions in brackets will be operative on September 1, 2023" (to indicate the date the fees in this proposal will be operative).

- Modify the first bullet point under the "Transaction Fees" header to specify that all fees identify the cost "or rebate" per share executed. And add a sentence stating that "Rebates are indicated by parentheses ()."

- In the "Base Rates" table, change the fee for executions at or above \$1.00 per share for Fee Code ML from "FREE" to "\$0.0004".

- In the "Base Rates" table, change the fee for executions at or above \$1.00 per share for Fee Code TL from "\$0.0009" to "\$0.0010".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code ML from "FREE" to "\$0.0004".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code TL from "\$0.0009" to "\$0.0010".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code MLS from "FREE" to "\$0.0004".

- In the "Fee Code Combinations and Associated Fees" table, change the fee for executions at or above \$1.00 per share for Fee Code TLS from "\$0.0009" to "\$0.0010".

The Exchange is not proposing to change the fees applicable to executions of and with displayed orders with an execution price below \$1.00 per share, which would remain free for such orders that provide displayed liquidity and 0.09% of the total dollar volume of the execution for orders that take displayed liquidity. IEX is also not proposing to make any changes to the fees applicable to the execution of

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See IEX Rule 1.160(s).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ See Investors Exchange Fee Schedule, available at <https://www.iextrading.com/resources/trading/fee-schedule>.

⁹ As discussed *infra*, if a Retail order removes displayed liquidity, the Retail order would not be charged a fee.

¹⁰ See *supra* note 8.

Retail¹¹ orders that remove displayed liquidity, which will continue to execute for free.

The current fees for orders that provide or take displayed liquidity were adopted in 2021 and designed to attract displayed order flow to the Exchange by offering a fee-based incentive to provide displayed liquidity.¹² The Exchange periodically assesses its fee structure and based upon a recent assessment, the Exchange believes that the proposed pricing change would further incentivize Members to submit displayed orders in securities priced at or above \$1.00 per share. The proposed fee change is designed to incentivize posting displayed liquidity on IEX in securities priced at or above \$1.00 per share in order to address competitive factors (as discussed more thoroughly in the Statutory Basis section) and facilitate price discovery and price formation, which the Exchange believes benefits all Members and market participants.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of section 6(b)¹³ of the Act in general, and furthers the objectives of sections 6(b)(4)¹⁴ 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. The Exchange believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory. The Exchange 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. The Exchange believes that the proposed fee structure will attract and incentivize displayed order flow as well as order flow seeking to trade with displayed order flow. Moreover, increases in displayed liquidity would contribute to the public price discovery process which would benefit all market participants and protect investors and the public interest.

The Exchange believes that the proposed fee structure for providing and removing displayed liquidity is reasonable and consistent with the Act. Specifically, the Exchange believes that for securities that trade at or above \$1.00 per share, it is reasonable to provide a \$0.0004 per share rebate for providing

displayed liquidity and to modestly increase the fee for removing displayed liquidity to \$0.0010 per share. As noted above, the Exchange 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. Within that context, charging \$0.0010 per share for orders that remove displayed liquidity (coupled with a \$0.0004 per share rebate for orders that add displayed liquidity) is designed to keep IEX's displayed trading prices competitive with those of other exchanges. In this regard, IEX notes that while many competing exchanges pay rebates to provide displayed liquidity that are substantially higher than those proposed, others charge fees to provide displayed liquidity for securities that trade at or above \$1.00 per share.¹⁵ Further, IEX notes that for securities that trade at or above \$1.00 per share, many competing exchanges charge substantially higher fees to remove displayed liquidity than those charged by IEX.¹⁶ Consequently, IEX believes that the proposed fee structure for providing and removing displayed liquidity is within the range charged by competing exchanges and does not raise any new or novel issues not already considered by the Commission in the context of other exchanges' fees.

In addition, IEX believes that it is reasonable and consistent with the Act to apply the proposed fees to executions when the adding and removing order originated from the same Member. IEX believes that the same factors that support the proposed fees overall, are also applicable to such executions.

¹⁵ See e.g., Nasdaq BX Equity 7 Section 118(a) (up to \$0.0030 fee per share to add displayed liquidity), available at <https://listingcenter.nasdaq.com/rulebook/bx/rules/BX%20Equity%207>; Cboe BYX Equities Fee Schedule (up to \$0.0020 fee per share to add displayed liquidity, available at https://www.cboe.com/us/equities/membership/fee_schedule/byx/); Cboe EDGA Equities Fee Schedule (up to \$0.0030 fee per share to add displayed liquidity, available at https://www.cboe.com/us/equities/membership/fee_schedule/edga/).

¹⁶ See e.g., Cboe BZX Equities Fee Schedule (up to \$0.0030 fee per share to remove displayed liquidity), available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/; MIAX Pearl Equities Exchange Fee Schedule (up to \$0.00295 fee per share for liquidity removing executions), available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Equities_Fee_Schedule_07112023.pdf; MEMX Fee Schedule (up to \$0.0030 fee per share for liquidity removing executions), available at <https://info.memxtrading.com/fee-schedule/>; Nasdaq Equity 7 Section 118(a) (up to \$0.0030 fee per share for any liquidity removing executions), available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-equity-7>; New York Stock Exchange Price List 2023 (up to \$0.0030 per share for liquidity removing executions), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

Specifically, IEX believes that the incentives to send displayed orders to IEX (and orders seeking to execute against displayed orders) will similarly provide an incentive to Members to send orders to IEX that might otherwise be internalized off-exchange, which may increase order interaction on IEX. Internalization on IEX is not guaranteed, and the additional orders that do not internalize are available to trade by all Members.

The Exchange also believes that it is reasonable and consistent with the Act not to modify its displayed fees for sub-dollar executions to synchronize those fees with the proposed fees for executions at or above \$1.00 per share. The Exchange believes that the existing fee structure for such executions continues to be reasonably designed to incentivize displayed order flow (and orders seeking to trade with displayed order flow) in such securities.

Further, IEX believes that it is reasonable and consistent with the Act not to change the fees applicable to the execution of Retail orders that remove liquidity, which will continue to execute for free. In this regard, the Exchange believes that the existing fee structure continues to be reasonably designed to incentivize the entry of Retail orders, and notes that the Commission, in approving IEX's Retail Price Improvement Program, acknowledged the value of exchanges' offering incentives to attract both retail investor orders and orders specifically designated to execute only with retail orders.¹⁷

The Exchange further believes that the proposed fee change is consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees that is also not unfairly discriminatory.

First, the fees for adding and removing displayed liquidity will apply on a per share basis in an equal and nondiscriminatory manner to all Members, without regard to the volume of orders submitted by a Member or other factors.

Second, because the fees would apply on a flat, per share basis—like IEX's existing fees—they will continue to be fully deterministic, in that a Member will be able to determine the Exchange fees for each execution. IEX believes this aspect of its fee proposal will assist all Members in making decisions about routing of orders without the uncertainties associated with volume tiers or other requirements that cannot

¹⁷ See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR-IEX-2019-05).

¹¹ See IEX Rule 11.190(b)(15).

¹² See Securities Exchange Act Release No. 91443 (March 30, 2021), 86 FR 17654 (April 5, 2021) (SR-IEX-2021-05).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

be determined at the time of the trade. IEX notes that applying fees in this way is consistent with the purpose of the Commission's proposal to require that exchange fees be set in a manner such that the amount of a fee or rebate related to each trade is determinable at the time of the trade.¹⁸

Additionally, the Exchange believes that it is reasonable to modify the first bullet under "Transaction Fees" to include a reference to rebates and to specify that rebates are indicated by parentheses. Updating this bullet point will avoid any potential confusion as to the applicable fees and rebates for each execution.

Finally, to the extent the proposed change is successful in incentivizing the entry and execution of displayed orders on IEX, such greater liquidity will benefit all market participants by increasing price discovery and price formation as well as market quality and execution opportunities.

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. 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. Moreover, as noted in the Statutory Basis section, the Exchange does not believe that the proposed changes raise any new or novel issues not already considered by the Commission.

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 match or on the volume of orders

submitted by a Member but on the type of order entered, and all Members can submit any type of order and will be subject to the same fee for that type of order. IEX believes that applying a flat, per share fee or rebate for each type of order avoids imposing a burden on competition by ensuring that individual Members do not gain a competitive advantage over other Members based solely on their size or volume of orders they are able to submit to the Exchange. Further, the proposed fee changes continue to be intended to encourage market participants to bring increased order flow to the Exchange, which benefits all market participants.

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 is effective upon filing pursuant to section 19(b)(3)(A)¹⁹ of the Act and subparagraph (f)(2) of Rule 19b-4²⁰ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)²¹ 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 (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2023-08 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-2023-08. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2023-08 and should be submitted on or before August 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

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¹⁸ See Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266, 80292-93 (December 29, 2022) (File No. S7-30-22).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ 15 U.S.C. 78s(b)(2)(B).

²² 17 CFR 200.30-3(a)(12).