

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91335; File No. SR-IEX-2021-04)

March 16, 2021

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Transaction Fees Pursuant to IEX Rule 15.110

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 March 9, 2021, 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 Act,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to conform language in Footnote 1 to the Fee Code Modifiers table of the IEX Fee Schedule to a pending rule change to allow Retail orders⁶ to execute for free against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price.⁷ Changes to the Fee Schedule pursuant to this

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 Rules 11.190(b)(15) and 11.232(a)(2).

⁷ The term “Midpoint Price” shall mean the midpoint of the NBBO. See IEX Rule 1.160(t). The term “NBBO” shall mean the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

proposal are effective upon filing,⁸ and the Exchange plans to implement the changes on March 15, 2021.

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 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

The Exchange proposes to amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to conform language in Footnote 1 to the Fee Code Modifiers table of the IEX Fee Schedule to a pending rule change to allow Retail orders to execute for free against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price. Footnote 1 to the Fee Code Modifiers table describes the application of Fee Code R, and that it applies only to a Retail order submitted by an IEX Retail Member Organization that (i) satisfies the criteria set forth in IEX Rules 11.190(b)(15) and 11.232(a)(1) and (ii) is a Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK only eligible to trade at the Midpoint Price. Further,

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

as specified in the IEX Fee Schedule, executed orders subject to Fee Code R are free.⁹

IEX's Retail Price Improvement Program is designed to provide retail investors with meaningful price improvement opportunities by offering price improvement to Retail orders. Only Members¹⁰ that the Exchange has approved as Retail Member Organizations¹¹ may submit Retail orders to the Exchange on behalf of retail customers.¹²

Currently, Retail orders can only execute at the Midpoint Price. IEX recently made an immediately effective rule filing to allow displayed odd lot orders on the Exchange,¹³ which is pending implementation,¹⁴ and a related immediately effective rule filing¹⁵ to provide that Retail orders will execute against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price (the "Retail Displayed Odd Lot Filing"). The Retail Displayed Odd Lot Filing also included amendments to the definition of a Retail order to no longer specify that such orders must be only eligible to trade at the Midpoint Price. Accordingly, IEX proposes to amend Footnote 1 to the Fee Code Modifiers table, which references the definition of Retail order, to remove the words "only eligible to trade at the Midpoint Price" from the end of the footnote. With this change a Retail order will continue to execute for free, whether it executes against an

⁹ Since IEX launched its Retail Price Improvement Program, Retail orders have always executed free of charge. See Securities Exchange Act Release No. 86854 (September 3, 2019), 84 FR 47330 (September 9, 2019) (SR-IEX-2019-08).

¹⁰ See IEX Rule 1.160(s).

¹¹ See IEX Rule 11.232(a)(1).

¹² For a Member to be approved as a Retail Member Organization, it must complete an application and submit materials reflecting that it either conducts a retail business or routes retail orders on behalf of another broker-dealer. See IEX Rule 11.232(b).

¹³ See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

¹⁴ See <https://iextrading.com/alerts/#/142> (March 2, 2021).

¹⁵ See SR-IEX-2021-03 filed on March 1, 2021.

order at the Midpoint Price or against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price (thereby offering the Retail order even more price improvement than it would receive executing at the Midpoint Price).

IEX is not proposing any other changes to its Fee Schedule, and will implement this change on March 15, 2020, so that it takes effect the first day of its phased implementation of displayed odd lot functionality.¹⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4)¹⁸ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX Members and persons using its facilities. Additionally, IEX believes that the proposed changes to the Fee Schedule are consistent with the investor protection objectives of Section 6(b)(5)¹⁹ of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in facilitating transactions in securities; 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; and are not designed to permit unfair discrimination between customers, brokers, or dealers.

Specifically, the Exchange's proposal to not charge fees for execution of Retail orders that match with unprotected displayed odd lot orders priced more aggressively than the Midpoint

¹⁶ See <https://iextrading.com/alerts/#/142> (March 2, 2021).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78f(b)(5).

Price is consistent with the Exchange's pricing scheme of not charging fees for Retail order executions.²⁰ IEX designed this pricing approach to maximize participation in the Retail Price Improvement Program by incentivizing market participants to submit such orders to IEX, thereby enhancing IEX's ability to compete with competing exchange and non-exchange venues that offer programs for the execution of the orders of retail customers. This fee structure is designed to attract the orders of retail customers (and counterparties that wish to trade with retail customers) to the Exchange, thereby supporting the competitiveness of the Exchange's Retail Price Improvement Program.

The Exchange continues to believe that offering free execution of Retail orders is a reasonable approach to incentivizing Members to send such orders to IEX. While the recent changes to the Retail Price Improvement Program to allow Retail orders to obtain price improvement by executing against unprotected displayed odd lot orders priced more aggressively than the Midpoint Price offers the opportunity for Retail orders to obtain even more meaningful price improvement, the Exchange continues to believe that allowing Retail orders to execute for free will enhance such incentive. The Exchange also believes that allowing all Retail orders to execute for free will not only benefit retail investors, but will also incentivize and benefit the posting of displayed odd lot orders on the Exchange that view interacting with retail investors as desirable.

IEX also believes that it is equitable and not unfairly discriminatory to provide free executions to all Retail orders notwithstanding that not all Members handle Retail orders. There is ample precedent for differentiation of retail order flow in the retail programs of other

²⁰ See supra note 9.

exchanges.²¹ Further, other exchanges provide pricing incentives to retail orders in the form of lower fees and/or higher rebates.²² Consequently, the Exchange does not believe that continuing to provide free executions for all Retail orders raises any new or novel issues not already considered by the Commission.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that charging no fees for the execution of all Retail orders, including Retail orders that execute against unprotected displayed odd lot orders priced more aggressively than the Midpoint Price, would continue to enhance competition and execution quality for retail order flow among execution venues and contribute to the public price discovery process. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar fees for orders executing in their retail programs, subject to the SEC rule change process. Further, the Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues, if fees are viewed as non-competitive.

The Exchange also does not believe that the proposed rule change will impose any

²¹ See e.g., Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754, 5762 (February 22, 2019) (SR-NYSE-2018-28); Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107); Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019); Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR-BX-2014-048).

²² See, e.g., Nasdaq BX price list available at https://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.

burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While Retail orders will be treated differently from other orders, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders.

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)²³ 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)²⁴ 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:

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 15 U.S.C. 78s(b)(2)(B).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2021-04 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-2021-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at 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-2021-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).