SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98994; File No. SR-IEX-2023-12)

November 20, 2023

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

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 November 7, 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 Securities Exchange Act of 1934 ("Act"),[4] and Rule 19b-4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend its Fee Schedule[6], pursuant to IEX Rule 15.110(a) and (c) (the "Fee Schedule"), to revise the fees applicable to transactions that add or remove non-displayed liquidity from the same Member[7], and to make conforming changes to the "Fee Code Modifiers" and "Fee Code Combinations and Associated Fees" sections of the Fee Schedule. Changes to the Fee Schedule

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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 the IEX Fee Schedule at https://www.iexexchange.io/resources/trading/fee-schedule for the complete list of fee code combinations and their corresponding fees.

7 See IEX Rule 1.160(s).

pursuant to this proposal are effective upon filing,[8] and the Exchange plans to implement the changes on January 1, 2024.

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 amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to revise the fees applicable to transactions that add or remove resting non-displayed liquidity from the same Member (the "internalization fee"). Currently such executions are free. As proposed, they would be subject to existing fees applicable to adding or removing non-displayed liquidity by different Members. IEX also proposes to revise the Fee Schedule to delete Fee Code Modifier "S" that applies when a Member executes against resting liquidity added by such Member and to make conforming changes to the "Fee Code Combinations and Associated Fees" section of the Fee Schedule. Changes to the Fee Schedule pursuant to this proposal are

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

effective upon filing,[9] and the Exchange plans to implement the changes on January 1, 2024.

As proposed, IEX will remove Fee Code Modifier S and the seven (7) Fee Code Combinations that contain Fee Code Modifier S from the IEX Fee Schedule. As described below, two (2) of the seven (7) Fee Code Combinations (MIS and TIS) currently result in a free execution for both the adding and removing orders of an execution, and as proposed will be replaced with existing Fee Code Combinations that do not include Fee Code Modifier S and thereby be subject to the regular fees for adding or removing non-displayed liquidity specified in such Fee Code Combinations. The remaining five (5) Fee Code Combinations would be replaced with existing Fee Code Combinations that do not include Fee Code Modifier S but would not result in a fee change.

- Fee Code Combination MIS, which applies when a Member adds resting non-displayed liquidity that executes against such Member's removing interest and is currently free, would be deleted; such executions would be subject to Fee Code Combination MI, which results in a fee of $0.0010 per share for executions priced at or above $1.00 per share or 0.10% of the total dollar value of the transaction for executions priced below $1.00 per share.

- Fee Code Combination TIS, which applies when a Member removes resting non-displayed liquidity added by such Member and is currently free, would be deleted; such executions would be subject to Fee Code Combination TI, which results in a fee of $0.0010 per share for executions priced at or above $1.00 per share or 0.10% of the total dollar amount of the transaction for executions priced below $1.00 per share.

- Fee Code Combination MLS, which applies when a Member's order adds displayed liquidity that executes against such Member's removing interest, would be deleted; such executions would be subject to Fee Code Combination ML and would continue to result in a rebate of $0.0004 per share for executions priced at or above $1.00 per share or no fee (i.e., free) for executions priced below $1.00 per share.

- Fee Code Combination TLS, which applies when a Member removes displayed liquidity added by such Member, would be deleted; such executions would be subject to Fee Code TL, which would continue to result in a fee of $0.0010 per share for executions priced at or above $1.00 per share or 0.09% of the total dollar value of the

9 15 U.S.C. 78s(b)(3)(A)(ii).

transaction for executions priced below $1.00 per share.

- Fee Code Combinations TLSR and TISR, which apply when a Retail[10] order removes displayed or non-displayed liquidity, respectively, from orders entered by the same Member, would be deleted; such executions would be subject to Fee Code Combinations TLR and TIR, respectively, and would continue to result in a free execution, like all other executions of Retail orders.

- Fee Code Combination MISA, which applies when a Retail Liquidity Provider[11] order adds non-displayed liquidity that executes against a Retail order entered by the same Member, would be deleted; such executions would be subject to Fee Code Combination MIA, which would continue to result in a free execution, like all other executions of Retail Liquidity Provider orders.

Thus, the only fees that would change under this proposal are for the fees currently charged for orders that add or remove non-displayed liquidity submitted by the same Member, which would now be charged the same $0.0010 fee per share that is charged for all other orders that add or remove non-displayed liquidity.[12]

The internalization fee was initially adopted when IEX launched as a national securities exchange and was designed to incentivize Members (and their customers) to send orders to IEX that might otherwise be internalized off exchange with the overall goals of, among other things, enhancing order interaction on the Exchange with the resultant benefit of exchange transparency, regulation, and oversight. While the internalization fee initially applied to executions that added or removed displayed and non-displayed interest from the same Member, it currently only applies to executions that add or remove non-displayed interest from the same Member.[13] The

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10 See IEX Rule 11.190(b)(15).

11 See IEX Rule 11.190(b)(14).

12 As noted above, for executions priced below $1.00 per share, the fee would be 0.10% of the total dollar amount value of the transaction. Also, as noted above, executions of Retail orders and Retail Liquidity Provider orders will continue to be free of charge.

13 See Securities Exchange Act Release No. 91443 (March 30, 2021), 86 FR 17654 (April 5, 2021) (SR–IEX–2021–05), which revised the application of the internalization fee, so that it only provided a free execution when a Member added or removed non-displayed interest from the same Member.

Exchange believes that the internalization fee was initially an appropriate means to incentivize order entry on IEX, but that in the current market structure environment there are myriad factors that impact order routing decisions and the internalization fee has not operated as a meaningful incentive. Consequently, IEX believes that impacted orders should be subject to the same fee structure as other IEX executions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(4)[15] 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)[16] 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.

The Exchange believes that the proposed changes are reasonable, fair and equitable, non-discriminatory, and consistent with the Act. 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.

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[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

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. As proposed, the fees for adding and removing non-displayed liquidity will apply in an equal and nondiscriminatory manner to all Members. All Members are eligible to enter non-displayed orders and orders that remove non-displayed liquidity, and the proposed fee structure will apply to all Members in the same manner.

IEX notes that other exchanges do not offer free executions for the execution of orders entered by the same Member. Consequently, IEX does not believe that its proposed fee structure for adding and removing non-displayed liquidity entered by the same Member raises any new or novel issues that the Commission has not already considered in the context of other exchanges' fees.

In addition, the Exchange believes that it is reasonable and consistent with the Act to delete Fee Code Modifier S and the Fee Code Combinations and Associated Fees that include Fee Code Modifier S, as described in the Purpose section, to reflect the proposed fee changes and to provide information to Members on the relevant charges.

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. The Exchange does not believe that the proposed fees 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 easily direct their orders to competing venues, including off-exchange venues, if its fees are viewed as non-competitive. As proposed, IEX fees for executions that add or remove non-displayed liquidity will continue to be below fees charged by competing exchanges.[17] Moreover, subject to the SEC rule filing process, other exchanges could adopt similar fees.

The Exchange also 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. The proposed fees will apply to all Members in the same manner, as discussed in the Statutory Basis section. Accordingly, the Exchange does not believe that these changes will have any impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)[18] of the Act and subparagraph (f)(2) of Rule 19b-4[19] 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

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17 See e.g., Cboe BZX Equities Fee Schedule (up to $0.0030 fee per share to remove non-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 non-displayed liquidity removing executions), available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_11012023.pdf; MEMX Fee Schedule (up to $0.0030 fee per share for non-displayed liquidity removing executions), available at https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/; Nasdaq Equity 7 Section 118(a) (up to $0.0030 fee per share for any non-displayed 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 non-displayed liquidity removing executions), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f)(2).

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)[20] 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-2023-12 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-2023-12. 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

[20] 15 U.S.C. 78s(b)(2)(B).

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-2023-12 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

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[21] 17 CFR 200.30-3(a)(12).