

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81346; File No. SR-IEX-2017-25)

August 8, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make a Correction to the Exchange Fee Schedule Related to Fees for Executions that Involve Taking Resting Interest with Non-Displayed Priority with a Displayable Order

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 August 7, 2017, 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”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to make a correction to the Exchange Fee Schedule related to fees for executions that involve taking resting interest with non-displayed priority with a displayable order. The Exchange proposes to implement the change beginning on September 1, 2017.

The text of the proposed rule change is available at the Exchange’s website at

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.

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 the 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 statement [sic] 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 the 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 make a correction related to the fees for executions that involve taking non-displayed resting interest with a displayable order. Subject to certain exceptions, the Exchange charges \$0.0009 per share (or 0.30% of the total dollar value of the transaction for securities priced below \$1.00) to Members for executions on IEX that include resting non-displayed interest⁶ for both the liquidity providing and liquidity removing order (the "Non-Displayed Match Fee").⁷ One exception relates to certain displayable orders that remove non-displayed liquidity upon entry. The Exchange Fee Schedule provides that the Non-Displayed Match Fee is not charged for displayable orders⁸ that remove non-displayed liquidity upon entry if, on a monthly basis, at

⁶ Non-displayed priority refers to an order or portion of a reserve order that is booked and ranked with non-display priority on the Order Book. See Rules 11.190(b)(3) and 11.190(b)(2).

⁷ This pricing is referred to by the Exchange as the "Non-Displayed Match Fee" on the Fee Schedule with a Fee Code of 'I' which is provided by the Exchange on execution reports.

⁸ See Rule 11.190(b)(3).

least 90% of the liquidity removing Member's aggregate executed shares of displayable orders added liquidity during the month in question.⁹

The Fee Schedule describes the calculation to determine if the Non-Displayed Match Fee is charged with reference to "TMVD" which means "total monthly volume displayable calculated as the sum of executions from the Member's displayable orders during the calendar month."¹⁰ However, the reference to a "Member's" displayable orders was inadvertent, and should instead have referred to each of a Member's market participant identifiers, or MPIDs, which is how the Exchange in practice has been calculating TMVD and thus determines whether the Non-Displayed Match Fee is applicable to particular executions.

Accordingly, the Exchange proposes to correct the IEX Fee Schedule to provide that TMVD means "total monthly volume displayable calculated as the sum of executions from each of the Member's MPIDs (on a per MPID basis) displayable orders during the calendar month." In addition, the Exchange proposes a clarifying amendment to the single asterisked footnote related to the Non-Displayed Match Fee to specify that the 90% calculation will be performed on a per MPID basis. Thus, the phrase "on a per MPID basis" would be added after the phrase "at least 90% of TMVD" in the footnote. Finally, the Exchange proposes to add a definition of MPID to the Fee Schedule.

With respect to the calculation of the Non-Displayed Match Fee and the applicable 90% threshold exception for executions of displayable orders that remove resting non-displayed liquidity upon entry, IEX reviewed Member invoices since its launch as an exchange in August 2016 through June 30, 2017 to assess whether any Members were charged fees that differed from

⁹ However, in such transactions, the non-displayed liquidity adding interest will be subject to the Non-Displayed Match Fee. The Exchange also does not charge a fee where the adding and removing order originated from the same Exchange Member.

¹⁰ See IEX Fee Schedule.

those described in the Fee Schedule. In other words, IEX recalculated the Non-Displayed Match Fee and the 90% threshold exception on a “per Member” basis (which is how the Fee Schedule currently reads) instead of on a “per MPID” basis (which is how IEX in practice had been calculating that fee). This assessment identified that nine Members were charged such differential fees in particular months, in some cases more than the fees described in the Fee Schedule and in some cases less than the fees described in the Fee Schedule. In total, seven Members were charged and paid \$18,948.54 in excess fees¹¹ and eight Members were not charged \$44,175.28 in fees that should have been charged¹². Five Members were overcharged and undercharged in different months.

In order to address the discrepancies, IEX will charge or credit each impacted member for the net amount overpaid or underpaid and will be included in the August 2017 monthly invoices to be sent in September 2017 pursuant to IEX Rule 15.120 notwithstanding that fees included thereof are for trading activity that occurred over prior months.¹³

The Exchange proposes to implement the revised fee on a going forward basis as of September 1, 2017, after which IEX will assess this fee on a MPID basis. Members will be charged for July and August based on the current Fee Schedule whereby the 90% calculation will be performed on a per Member basis, aggregating all of the Member’s MPIDs.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section

¹¹ The range is from \$0.09 to 7811.66.

¹² The range is from \$1.51 to \$29,482.12.

¹³ In the event that a Member owed a credit declines the credit, IEX will make a charitable donation in the amount of such credit.

6(b)¹⁴ of the Act in general, and furthers the objectives of Sections 6(b)(4)¹⁵ 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. In addition, the Exchange believes that it is consistent with the Act to correct the Fee Schedule so that the Fee Schedule is accurate, avoiding any potential confusion among Members. The Exchange further believes that the correction to the Fee Schedule is reasonable, equitable, and not unfairly discriminatory because all similar situated Members will be subject to the same fee structure.

The Exchange also believes that it is consistent with the Act and an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities to measure whether the 90% threshold for adding liquidity with displayable orders is reached on an MPID basis. As explained in IEX's rule change adopting the exception to the Non-Displayed Match Fee, the flexibility is designed to address limited inadvertent liquidity removal by Members who are largely adding displayed liquidity and generally intend to add displayed liquidity on IEX, to further encourage aggressively priced displayed orders.¹⁶ The Exchange believes that Members that utilize multiple MPIDs generally use different MPIDs for different trading strategies or customers. Therefore, the Exchange believes that measuring by MPIDs is a more precise manner of assessing whether a Member's trading strategy (or that of a customer) is largely adding displayed liquidity and generally intends to add displayed liquidity with displayable orders.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 78550 (August 11, 2016), 81 FR 54873 (August 17, 2016) (SR-IEX-2016-09).

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

IEEX 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 proposed rule change is designed to correct an inadvertent error rather than a competitive issue. The Exchange does not believe the proposed rule change will result on a burden on intramarket competition because all Members will be subject to the Non-Displayed Match Fee in the same manner on a fair and consistent basis. While different fees will be assessed in some circumstances, these different fees are not based on the type of Member entering the order and all Members can submit any type of order. Further, assessing whether the Non-Displayed Match Fee is applicable on a per MPID basis is intended to encourage market participants to enter aggressively priced displayed orders on the Exchange, which enhances price discovery and deepens the Exchange's liquidity pool to the benefit of all market participants. Further, the Exchange operates in a highly competitive environment in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable.

The Exchange also does not believe that the proposed rule change will result in any burden on intermarket competition because other venues are free to adopt comparable pricing.

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)¹⁷ 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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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)¹⁸ 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. Please include File Number SR-IEX-2017-25 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-2017-25. 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 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

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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 also will be available for inspection and copying at principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-25 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).