

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81502; File No. SR-IEX-2017-28)

August 30, 2017

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

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 August 16, 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”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) to adopt pricing for orders that execute pursuant to Rule 11.231 (Regular Market Session Opening Process for Non-IEX-Listed Securities). Changes to the Fee Schedule pursuant to this proposal are effective upon filing, and will be operative once the Exchange begins conducting the Regular Market Session Opening Process for Non-IEX-Listed Securities (the

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<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.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

“Opening Process”).<sup>6</sup> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently filed and the Commission approved a proposed rule change to Rule 11.231, which modified the Opening Process for non-IEX-listed securities.<sup>7</sup> The Exchange proposes to update its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to add a new Fee Code “X” to identify the fee applicable to certain orders that execute in the Opening Process. More specifically, orders that execute in the Opening Process will receive the new Fee Code X on execution reports as follows:

- Execution reports for non-displayed orders resting on the Continuous Order Book that

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<sup>6</sup> See, IEX Trader Alert #2017-027 available at <https://www.iextrading.com/trading/alerts/2017/027/>.

<sup>7</sup> See Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017) (SR-IEX-2017-11).

execute in the Opening Process will receive new Fee Code X rather than Fee Code I.<sup>8</sup>

- Execution reports for displayed orders resting on the Continuous Order Book that execute in the Opening Process will continue to receive Fee Code L and will also receive new Fee Code X.
- Execution reports for all orders on the Cross Book<sup>9</sup> that execute in the Opening Process will receive new Fee Code X.

The Exchange is proposing to charge fees that are analogous to existing fees for orders that execute in the Opening Process. Accordingly, non-displayed orders on the Continuous Order Book and orders on the Cross Book that are executed in the Opening Process will receive Fee Code X on their execution reports and will be subject to a fee of \$0.0009 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00). Further, orders that were displayed on the Continuous Order Book during the Pre-Market Session<sup>10</sup> that are executed in the Opening Process will receive new Fee Code X and existing Fee Code L, and will not be charged a fee because, pursuant to the IEX Fee Schedule, to the extent a Member receives multiple Fee Codes on an execution, the lower fee shall apply.<sup>11</sup>

The Exchange notes that the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity, and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry are not applicable to the

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<sup>8</sup> The Exchange notes that orders taking or adding non-displayed liquidity prior to or after the Opening Process, will continue to receive Fee Close I, either alone or in conjunction with other applicable Fee Codes.

<sup>9</sup> See Rule 11.231(a).

<sup>10</sup> See Rule 1.160(z).

<sup>11</sup> See IEX Fee Schedule, Transaction Fees, bullet three.

Opening Process. As discussed below in the Statutory Basis section, the Opening Process is a bulk execution without explicit counterparties.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>12</sup> of the Act in general, and furthers the objectives of Sections 6(b)(4)<sup>13</sup> 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 notes that it 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.

IEX believes that its proposed pricing for the Opening Process is reasonable and equitable because the Exchange is proposing to charge fees analogous to those already in place for orders executed on the Exchange during continuous trading,<sup>14</sup> while also accounting for orders on the Cross Book executed in the Opening Process. Specifically, non-displayed orders resting on the Continuous Order Book during the Pre-Market Session that are executed in the Opening Process, as well as orders on the Cross Book that are executed in the Opening Process, will be charged the Opening Match Fee (which is equal to the existing Non-Displayed Match Fee), while displayed orders on the Continuous Order Book in the Pre-Market Session executed in the Opening Process will be subject to the existing Displayed Match Fee.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge the Opening Match Fee (which is equal to the existing Non-Displayed Match Fee) to

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> See Securities Exchange Act Release No. 78550 (August 11, 2016), 81 FR 54873 (August 17, 2016) (SR-IEX-2016-09).

orders on the Cross Book that are executed in the Opening Process, because such orders (regardless of display instruction) are queued and not displayed prior to or during the Opening Process.<sup>15</sup> Furthermore, as noted above, such fee is consistent with the fee currently charged by the Exchange for taking and providing non-displayed liquidity.

While the Displayed Match Fee applicable to executions during continuous trading also applies to a non-displayed order that removes liquidity from a displayed resting order as counterparty, in the context of the Opening Process (which is a bulk execution of multiple buy and sell orders at a single price), the Exchange does not believe that it is appropriate to provide the Displayed Match Fee to non-displayed orders that execute in the Opening Process because there are no explicit counterparties in a bulk execution. Similarly, the Exchange does not believe that the exception to the Non-Displayed Match Fee for displayable orders that take resting interest upon entry is applicable in the context of the Opening Process since such orders are not able to remove resting interest on entry in the Opening Process, because they are either queued on the Cross Book and not displayed, or resting displayed on the Continuous Order Book.<sup>16</sup> Furthermore, as noted above the Opening Process is a bulk execution of multiple buy and sell orders at a single price, and thus there are no counterparties to distinguish between liquidity provider and liquidity takers, or their respective display status.<sup>17</sup>

IEX also believes that it is appropriate, reasonable, and consistent with the Act not to charge a fee for the execution of an order that was displayed on the Continuous Order Book

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<sup>15</sup> The Exchange notes that to the extent such orders are unexecuted after the Opening Process, the Exchange would display such orders consistent with their display instructions.

<sup>16</sup> The Exchange notes that it is possible for a displayed order to remove non-displayed liquidity in the Pre-Market Session; however, such execution would not be part of the Opening Process, and would be subject to the exchanges existing fee schedule.

<sup>17</sup> See Rule 11.231(a).

during the Pre-Market Session prior to the Opening Process. As with the existing fee structure for execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery, and consistent with the overall goal of enhancing market quality. IEX believes that, as with the existing Displayed Match Fee, not charging a fee for such a previously displayed order is equitable and not unfairly discriminatory because it is designed to facilitate execution of, and enhance trading opportunities for, displayable orders, thereby further incentivizing entry of displayed orders.

Further, the Exchange notes that the proposed fees are nondiscriminatory because they will apply uniformly to all Members and all Members have the opportunity to submit both displayed and non-displayed orders for execution in the Opening Process. In addition, the Exchange believes that the proposed fees for the Opening Process are appropriate, reasonable, and consistent with the Act, because such fees are within the range of transaction charged by other exchanges for the opening process for non-listed securities.<sup>18</sup> Further, although orders that execute in the Opening Process may be subject to different fees, for the reasons discussed in the Purpose section, the Exchange notes that other exchanges also charge differential pricing for orders that execute in their opening process.<sup>19</sup>

Additionally, the Exchange believes that its proposed Fee Code X, to be provided on

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<sup>18</sup> For example, the Nasdaq Stock Market charges fees ranging from \$0.0015 - \$0.00085 for orders executed in the Nasdaq Opening Cross, including capping such fees at \$35,000 per month for certain members, which includes crosses for listed and non-listed securities (see, <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>). Similarly, Bats EDGX Exchange charges \$0.0010 for orders executed in the EDGX opening or re-opening process for non-listed securities priced above \$1.00 (see, [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/)).

<sup>19</sup>

Id.

execution reports, will provide transparency and predictability to Members as to the applicable transaction fees, because Members can determine which Fee Code is applicable to the execution of a particular order in the Opening Process.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, 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. Further, IEX believes that its proposal does not raise any new or novel issues that have not previously been considered by the Commission in connection with the existing IEX fees or the fees of other national securities exchanges.

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. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and hopefully draw additional volume to the Exchange for the Opening Process. 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 of Members or competing venues in a manner 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 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 execute in the Opening Process but on the type of order entered and all Members can submit any type of order. Further, the proposed fees are intended to encourage market participants to bring increased volume 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 has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>20</sup> 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)<sup>21</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

#### **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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-28 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-2017-28. 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 also will be available for inspection and copying at the 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-2017-28, 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.<sup>22</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).