

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81602; File No. SR-IEX-2017-29)

September 13, 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 30, 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 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 [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission’s Public

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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.

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 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 interest<sup>6</sup> for both the liquidity providing and liquidity removing order (the "Non-Displayed Match Fee").<sup>7</sup> One such 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 orders<sup>8</sup> that remove non-displayed liquidity upon entry if, on a monthly

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<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> See Rule 11.190(b)(3).

basis, at least 90% of the liquidity removing MPID's aggregate executed shares of displayable orders added liquidity during the month in question (the "90% display discount").<sup>9</sup>

On August 7, 2017, the Exchange filed an immediately effective rule change to reflect that the calculation used to determine if a Member's MPID(s) qualify for the 90% display discount is done on a per MPID basis (rather than a per Member basis, as originally reflected in the Fee Schedule).<sup>10</sup> The Exchange recently identified several typographical errors in the parenthetical in the single asterisked footnote related to the Non-Displayed Match Fee that describes the calculation of the 90% display discount. While the single asterisked footnote appurtenant to the Non-Displayed Match Fee is itself correct regarding the conditions of the 90% display discount, the parenthetical contains several typographical errors (as described below) and thus does not accurately reflect the exact calculation of such fee. Further, the rule change filing adopting the IEX Fee Schedule accurately described the application of the 90% display discount.<sup>11</sup>

Specifically, the parenthetical, which was intended to describe the mechanical calculation of the 90% display discount, contains several typographical errors. It currently states that the 90% display discount is applicable if a Member's execution reports reflect that the sum of executions with Fee Code L and a Last Liquidity Indicator (FIX tag 851) of '1' (Added Liquidity) (i.e., collectively, the numerator), divided by the sum of executions with Fee Code L (i.e., the denominator), is at least 90% for the calendar month. As currently written, the calculation as

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<sup>9</sup> 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.

<sup>10</sup> See Securities and Exchange Act Release No. 81346 (August 8, 2017), 82 FR 37973 (August 14, 2017).

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

described in the parenthetical would include an MPID's non-displayable orders that take displayed liquidity in the denominator, because such orders would receive Fee Code "L" on their execution reports, which satisfies the conditions for inclusion in the denominator.<sup>12</sup> Thus, the current parenthetical describing the 90% display discount is not reflective of the Exchange's Fee Schedule, in that it is too broad in its description of the denominator of the 90% display discount.

Accordingly, the Exchange proposes to correct the parenthetical in the single asterisked footnote appurtenant to the Non-Displayed Match Fee in the IEX Fee Schedule to correctly describe the mechanical calculation of the 90% display discount as follows (proposed new language is underlined; proposed deletions are in brackets):

- \* \$0.0009 (0.30% of TDVT for < \$1.00), otherwise FREE if Taking Non-Displayed Liquidity with a Displayable Order and at least 90% of TMVD, on a per MPID basis, was identified by IEX as Providing Displayed Liquidity (i.e., the [Member's] MPID's execution reports reflect that the sum of executions with Fee Code L and a Last Liquidity Indicator (FIX tag 851) of '1' (Added Liquidity) on orders with neither a Max Floor (FIX tag 111) equal to zero, nor a time-in-force (FIX tag 59) of '3' (IOC) or '4' (FOK), divided by the sum of all executions on orders with neither a Max Floor (FIX tag 111) equal to zero, nor a time-in-force (FIX tag 59) of '3' (IOC) or '4' (FOK) [with Fee Code L], is at least 90% for the calendar month).

As modified, the parenthetical would make clear that all of an MPID's executions that receive Fee Code L and a Last Liquidity Indicator of '1' (which together indicate that an order added displayed liquidity) on all of an MPID's displayable orders (which necessarily includes all orders that have neither a Max Floor value of zero,<sup>13</sup> nor a time-in-force of immediate-or-cancel<sup>14</sup> or fill-or-kill time<sup>15</sup>) contribute to the numerator of the 90% display discount. Further,

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<sup>12</sup> See the [Investors Exchange Fee Schedule](#), Fee Code 'L', Taking Displayed Liquidity.

<sup>13</sup> A Max Floor of zero is an instruction not to display any portion of an order.

<sup>14</sup> See IEX Rule 11.190(c)(1).

<sup>15</sup> See IEX Rule 11.190(c)(2).

the denominator would be equal to the sum of all executions of an MPID's displayable orders (i.e., all orders that have neither a Max Floor value of zero, nor a time-in-force of immediate-or-cancel or fill-or-kill time), regardless of the Fee Code and Last Liquidity Indicator. To provide additional clarity, the Exchange also proposes to revise the language describing the numerator to align such description with the proposed description of the denominator.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>16</sup> of the Act in general, and furthers the objectives of Sections 6(b)(4)<sup>17</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. 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 continue to be subject to the same fee structure. Moreover, the Exchange believes it is consistent with the Act to clarify the calculation used to determine the 90% display discount, so that the Exchange's Fee Schedule remains transparent and consistent with the expectations of its Members.

### 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 proposed rule change is designed to correct an inadvertent error rather than a competitive issue.

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<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4).

The Exchange does not believe the proposed rule change will result in a burden on intramarket competition because all Members will continue to be subject to the Non-Displayed Match Fee and will be eligible for the 90% display discount 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. Lastly, 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)<sup>18</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>19</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</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-2017-29 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-2017-29. 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-2017-29, 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>20</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).