

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86626; File No. SR-IEX-2019-07)

August 9, 2019

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the IEX Fee Schedule, Pursuant to IEX Rules 15.110(a) and (c), to Charge a Fee of \$100 Per Month for Each Logical Order Entry Port in Excess of Five Per User

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on August 8, 2019, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 Act,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to charge a fee of \$100 per month for each logical order entry port (“Order Entry Ports”)⁶ in excess of five per User.⁷ As described below, although changes to the Fee Schedule pursuant to this proposal are effective upon filing, IEX is

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 Order Entry Ports are used for sending and receiving order messages.

⁷ See Rule 1.160(qq).

choosing to defer implementation of the proposed fee until October 1, 2019 to provide an opportunity for IEX to receive and consider any comments before the fee is assessed, as well as an opportunity for Users to reduce the number of their assigned Order Entry Ports and corresponding fees before the fee is applicable.

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 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 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

IEX has not previously imposed any fees for Order Entry Ports used to access its market. In general, IEX believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. IEX believes this high standard is especially important when an exchange imposes fees for its own market data or for connectivity to the exchange, because it believes each exchange

has a natural monopoly over its own market data (specifically depth of book and direct access to top of book) and access to its own market. Therefore, IEX believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs and that it is not taking advantage of its unique position as an exchange that many market participants must be able to access.

For the same reasons, IEX is also choosing to defer implementation of the proposed fee to October 1, 2019 in order to provide an opportunity for industry comment and to take into consideration any such comments before beginning to charge the fee. Under the existing regulatory regime, exchange fee changes “shall take effect upon filing with the Commission.”⁸ While the proposed fee is being filed under this provision, IEX believes that proposals to raise fees for market data and connectivity should be exposed to public notice and comment before they are implemented. Consistent with this view, IEX is voluntarily delaying implementation of the proposed fee so that market participants have a reasonable opportunity to assess whether it is fair and reasonable and meets the other standards of the Exchange Act and to provide written comments, if they wish, before any Users of IEX are charged the new fee.⁹ Additionally, delayed implementation will provide an opportunity for Users to disconnect any of their assigned Order Entry Ports, if they choose to do so, thereby reducing the fee to be charged, before the first month in which IEX will charge for assigned Order Entry Ports in excess of five.

⁸ See Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ Although fee filings are effective upon filing with the Commission, such filings are subject to a 21-day comment period following filing. Further, 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. See 15 U.S.C. 78s(b)(3)(C). Therefore, any comments submitted about this fee filing within this time frame can inform any decision by the Commission as to whether to suspend the rule change.

In proposing to charge fees for Order Entry Port connectivity, IEX has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members¹⁰ – both generally and in relation to other Members, i.e., to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. IEX believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,¹¹ and Rule 19b-4 thereunder,¹² with respect to the types of information self-regulatory organizations (“SROs”) should provide in seeking approval of any fee changes, and Section 6(b) of the Act,¹³ which requires, among other things, that exchange fees be reasonable and equitably allocated,¹⁴ not designed to permit unfair discrimination,¹⁵ and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁶ This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.¹⁷

¹⁰ See Rule 1.160(s).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ The Commission staff recently published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (“Guidance”). While IEX understands that the Guidance does not create new legal obligations on SROs, the Guidance is consistent with IEX’s view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. See Staff Guidance on

As noted above, IEX currently does not charge fees for connectivity to the Exchange, including fees for logical connectivity for order entry purposes. The objective of this approach was to eliminate any fee-based barriers to connectivity for Members when IEX launched as a national securities exchange in 2016, and it was successful in achieving this objective in that a large portion of Members are directly connected to IEX. As detailed below, IEX recently calculated its annual aggregate costs for providing connectivity to the Exchange at \$1,508,649. Because IEX has to date offered logical port connections free of charge, IEX has borne 100% of all connectivity costs. In order to recover a portion of the aggregate costs of providing connectivity to its Users (both Members and Service Bureaus¹⁸), the Exchange is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to charge a fee of \$100 per month for each Order Entry Port in excess of five per User.¹⁹ The proposed fees would not apply to logical ports used for other purposes, such as receiving market data or drop copies,²⁰ nor would such ports count toward the five free Order Entry Port calculation. Furthermore, IEX

SRO Rule Filings Relating to Fees (May 21, 2019) available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

¹⁸ Service Bureaus, which offer technology-based services to other companies for a fee, may access the Exchange's Order Entry Ports on behalf of one or more Members. See Rule 11.130(d).

¹⁹ Users who connect to the Exchange's Order Entry Ports are either Members that connect directly to Exchange, or Service Bureaus through which one or more Members connect to the Exchange. Because it is the Exchange's Members that send orders to the Exchange (either directly or through a Service Bureau), this rule filing focuses on the expected impact on Members. However, because IEX assigns Order Entry Ports to Users, which includes Service Bureaus that provide connectivity to Members, the impact of the proposed fee on Service Bureaus will be addressed whenever relevant.

²⁰ Confirmations of orders and execution reports are transmitted by the Exchange over the Order Entry Port that was used to enter the order. A "drop copy" contains redundant information that a Member chooses to have "dropped" to another destination (e.g., to allow the Member's back office and/or compliance department, or another Member – typically the Member's clearing broker – to have immediate access to the information). Drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders.

would not charge any fee for Users to connect to IEX's Disaster Recovery Facility or Test Facility, for the reasons explained below.²¹

Similar to other exchanges, IEX offers its Members logical connectivity ports, also known as "sessions," for order entry and receipt of trade execution reports and order messages.²² Members can also choose to connect to IEX indirectly through a session maintained by a third-party Service Bureau. Service bureau sessions may provide access to one or multiple Members on a single session. Users of IEX services (both Members and Service Bureaus) ("Users") seeking to establish one or more sessions with IEX submit an Equities Port Request Form to IEX.²³ Upon receipt of the completed paperwork, IEX assigns the User the number of sessions requested by the User. The number of sessions assigned to each User as of May 31, 2019 ranges from one to more than 100, depending on the scope and scale of the Member's trading activity on IEX (either through a direct connection or through a Service Bureau) as determined by the Member. For example, by using multiple sessions, Members can segregate order flow from different internal desks, business lines, or customers. IEX does not impose any minimum or maximum requirements for how many Order Entry Ports a Member or Service Bureau can maintain, and it is not proposing to impose any minimum or maximum session requirements for its Members or their Service Bureaus.

²¹ Logical ports to connect to the Disaster Recovery or Test Facilities also would not count toward the five free Order Entry Port calculation.

²² Logical connectivity for order entry is provided via network switch and cabling infrastructure that delivers order and execution messages, as well as server infrastructure that runs software processes responsible for validating and formatting such messages for either internal or external consumption.

²³ See the Equities Port Request Form and Service Bureau Authorization at <https://iextrading.com/docs/IEX%20Connectivity%20Agreements%20and%20Forms.pdf> Members may also send orders to IEX as a sponsored participant of another Member, pursuant to Rule 11.130.

In January 2019, IEX conducted a study of its aggregate costs to produce market data and connectivity (the “Cost Study”).²⁴ The Cost Study includes a detailed analysis of IEX’s aggregate baseline costs, including the methodology it used for determining such costs for three separate segments – market data, physical connectivity (the physical connections required to access IEX in its data center), and logical connectivity, which concerns the cost to offer and maintain Order Entry Ports. The Cost Study estimated that IEX’s aggregate annual cost to provide Order Entry Ports in 2018 was \$1,508,976, or \$83.17 per Order Entry Port per month.²⁵ IEX currently does not charge fees for Order Entry Ports and therefore generates no revenue in connection with such ports.

The following chart, from the Cost Study, details the individual annual line item costs considered by IEX to be directly related to offering logical connectivity. The servers, switches, and software licenses included were limited to those specifically dedicated to order entry access. “Monitoring” includes hardware and software licenses used to monitor these physical assets and the health of the order entry services provided by the Exchange. All physical assets and software, which also includes assets used for testing (“ITF Order Entry”) and monitoring of order entry infrastructure, were valued at cost, depreciated over three years. For personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining logical connectivity, and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401(k) matching contributions. The total annual cost of \$1,508,976 was divided by the number of available Order Entry Ports, or sessions, to arrive at an annual cost of \$998, or approximately \$83 per month, per

²⁴ See “The Cost of Exchange Services – Disclosing the Cost of Offering Market Data and Connectivity as a National Securities Exchange” (January 2019) available at <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>.

²⁵ Id at 30.

port.²⁶

Table 1.

Annual IEX Order Entry Infrastructure		(\$1,616,409)²⁷
Order Entry Distribution Switches (2 x 52 port)		(\$16,667)
Order Entry Access Layer Switches (6 x 24 port)		(\$40,000)
Client Gateway & Drop Copy Servers (CLGW / DCGW) (84/6)		(\$165,000)
a. Software Licensing		(\$48,000)
Sequencing Access Layer Switches (6 x 24 port)		(\$50,000)
ITF Order Entry		(\$95,333)
Space, Power, Security		(\$14,560)
Administrative Access		(\$33,333)
Monitoring		(\$320,567)
Personnel		(\$832,949)
Max Order Entry Sessions (Logical Sessions)		1,512
Max Drop Copy Sessions (Logical Sessions)		108
Annual Cost per Order Entry Session		(\$998)
Annual Cost per Drop Copy Session		(\$998)

In order to recoup a portion of its aggregate costs in providing Order Entry Ports, IEX is proposing to charge a fee of \$100 per month for each Order Entry Port above five such ports per User. IEX proposes to provide five free Order Entry Ports in order to minimize barriers to entry for Members and incentivize liquidity on the Exchange. IEX's business model seeks to generate revenue from trading rather than from data and connectivity fees, so an essential part of the

²⁶ As reflected in Table 1, the Cost Study estimated that IEX's total annual order entry infrastructure costs are \$1,616,409, which includes a cost of \$107,761 to provide 108 drop copy ports. However, IEX is not proposing to charge for drop copy ports, and therefore subtracted those costs (\$107,761) from the annual order entry infrastructure costs, which results in the total estimated annual cost for providing Order Entry Ports of \$1,508,976. See Id. at 28-31.

²⁷ Id.

proposed fee structure is to enable all Members to be able to connect to the Exchange at no cost. As described in more detail below, based on Order Entry Port connectivity as of May 31, 2019, over 75% of Members with connectivity use fewer than five Order Entry Ports and therefore will not be subject to any corresponding port fees. In determining the appropriate number of Order Entry Ports to provide for free, IEX considered several factors. First, IEX recognizes that each User needs at least two Order Entry Ports for redundancy purposes. Second, while there is no “exact science” to the determination, from a review of the number of Order Entry Ports currently requested and assigned to each User, IEX believes that five such ports appear to be sufficient for a majority of its Users. On that basis, IEX chose five Order Entry Ports as a base level of free connectivity. Some Members will use many more Order Entry Ports than other Members (and the five provided for free), depending on the nature and volume of the business they conduct on IEX and the choices they make in segmenting that business among different Order Entry Ports. Allowing for this additional use of Exchange capacity represents an aggregate cost that IEX seeks to recover in part.

The proposed change is also designed to encourage Users to be efficient with their Order Entry Port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing Order Entry Ports. As discussed below, approximately 25% of the Order Entry Ports maintained by Members were not used to send orders to IEX during May 2019. There is no requirement that any Member maintain a specific number of Order Entry Ports and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate.

Finally, the fee will help to encourage Order Entry Port usage in a way that aligns with IEX’s regulatory obligations. As a national securities exchange, IEX is subject to Regulation

Systems Compliance and Integrity (“Reg SCI”).²⁸ Reg SCI Rule 1001(a) requires that IEX establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain IEX’s operational capability and promote the maintenance of fair and orderly markets.²⁹ By encouraging Users to be efficient with their Order Entry Port usage, the proposed fee will support IEX’s Reg SCI obligations in this regard by ensuring that unused Order Entry Ports are available to be allocated based on individual User needs and as IEX’s overall order and trade volumes increase.³⁰ Additionally, because IEX will continue not to charge for connections to its Disaster Recovery Facility or its Test Facility, the proposed fee structure will further support IEX’s Reg SCI compliance by reducing the potential impact of a disruption should IEX be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing without incurring any port fee costs.³¹

As proposed, Order Entry Port fees will apply based on the User that maintains the Order Entry Port. If that User is a Member, the Member will not be subject to a fee for the first five Order Entry Ports and will be assessed a \$100 monthly fee for each assigned Order Entry Port in excess of five. If that User is a Service Bureau, the Service Bureau likewise will not be subject to a fee for the first five Order Entry Ports and will be assessed a \$100 monthly fee for each Order Entry Port assigned in excess of five. Depending on the contractual terms in place,

²⁸ 17 CFR 242.1000-1007.

²⁹ 17 CFR 242.1001(a).

³⁰ In the past year, IEX has seen a 10.8% increase in the number of active use sessions.

³¹ By comparison, some other exchanges charge less to connect to their disaster recovery facilities, but still charge an amount that could both recoup costs and potentially be a source of profits. See, e.g., Nasdaq Stock Market LLC Equity 7, Section 115 (Ports and other Services).

Service Bureaus may pass on such port fees to their client Members.³²

As of May 31, 2019, 136 Members have assigned Order Entry Ports (either directly or through a Service Bureau), with the number of assigned Order Entry Ports ranging from one to 139 per Member. The number of assigned Order Entry Ports is highly concentrated among a few Members. Close to 50% of all Order Entry Ports are assigned to seven Members. Of the Order Entry Ports assigned to those seven Members, three are assigned over 32% of the Order Entry Ports, and two are assigned close to 25%. More than 75% of IEX's Members (103 of 136) with logical port connectivity to the Exchange will not be subject to any Order Entry Port fees under the proposed fee based on current usage, because they are assigned five or fewer Order Entry Ports (either directly or through a Service Bureau).

Requests for (and assignment of) Order Entry Ports have increased since IEX launched as an exchange in 2016 and as IEX's order and trade volume have increased. In addition, some Users request and are assigned more Order Entry Ports than they use. For example, during May 2019, 100 Members did not send orders through one or more assigned Order Entry Ports, representing approximately 25% of all assigned Order Entry Ports.

Based on May 2019 data, IEX projects that 33 Members will be subject to Order Entry Port fees, assuming no changes in the number of assigned Order Entry Ports. The following chart provides data on projected monthly fees based on current Order Entry Port usage and a separate projection assuming Members eliminate all currently unused assigned Order Entry Ports

³² A total of 76 Members connect to IEX through an Order Entry Port assigned to a Service Bureau, but only two Service Bureaus currently maintain more than five Order Entry Ports, thereby subjecting them to a fee for some of these ports.

following the implementation of the fee:³³

Table 2.³⁴

Fee Range	All Currently Assigned Ports		Eliminating Unused Assigned Ports	
	# Members	Estimated Average Monthly Fees	# Members	Estimated Average Monthly Fees
No Fee	103	\$ -	109	\$ -
Under \$500	10	\$ 2,800	9	\$ 2,700
\$500-\$999	6	\$ 4,500	4	\$ 2,900
\$1,000-\$2,499	7	\$ 12,700	7	\$ 10,400
\$2,500-\$4,999	6	\$ 18,300	3	\$ 8,300
\$5,000+	4	\$ 38,900	4	\$ 31,900
Totals	136	\$ 77,200	136	\$ 56,200

Depending on the number of unused Order Entry Ports that are retained following implementation of the proposed fee change, IEX projects that between 103 and 109 Members will not be subject to any Order Entry Port fees and between 27 and 33 Members will be subject to the Order Entry Port fee, with most of those Members (between 20 and 23) paying less than \$2,500 per month for their logical port connections. Between seven and ten Members are projected to be subject to a monthly charge of more than \$2,500. Only four Members will be

³³ As discussed below, upon implementation of the new fee, IEX expects some Members to reduce their unused assigned Order Entry Ports, which would lead to a commensurate drop in the Order Entry Port fees incurred by those Members.

³⁴ All four tables focus on the number of Order Entry Ports assigned to Members, and do not include any of the Service Bureaus. As discussed in note 32, above, under the proposed fee, two Service Bureaus currently maintain more than five ports each, and would therefore be charged for those Order Entry Ports in excess of five. Specifically, these two Service Bureaus will collectively be charged \$3,000 per month based on their current Order Entry Port usage (\$2,400 per month if the Service Bureaus disconnect their unused sessions). Those two Service Bureaus may pass the Order Entry Port fees on to their Members, depending on the contractual relationship between the parties. Although these Service Bureaus are not included in the four tables, the projected revenue from the Service Bureaus is included in any calculations of total projected revenues from this fee filing.

potentially subject to a monthly charge in excess of \$5,000. As described in more detail below, the proposed fee is projected to partially recover IEX's aggregate costs of providing logical Order Entry Ports to Users. The anticipated annual deficit (i.e., the difference between aggregate costs and fee revenue) is projected to be between \$546,249 and \$805,449.³⁵

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of Order Entry Ports a User requests, based upon factors deemed relevant by each User (either a Member or Service Bureau). IEX believes these factors include the costs to maintain connectivity, the volume of incoming messages sent to IEX, and choices Members make in how to segment or allocate their order flow.³⁶

IEX assessed whether the fee may impact different types or sizes of Members differently. As a threshold matter, and as discussed above, the fee does not by design apply differently to different types or sizes of Members. Nonetheless, IEX assessed whether there would be any differences in the amount of the projected fee that correlate to the type and/or size of different Members. This assessment revealed that the number of assigned Order Entry Ports, and thus projected fees, correlates closely to a Member's inbound message volume to IEX. Specifically,

³⁵ These numbers are calculated as follows: IEX calculates its annual aggregate cost for providing Order Entry Ports as \$1,508,649. Based on current Order Entry Port usage, on an annual basis, IEX will collect \$926,400 from its Members, and, as described in footnote 34, above, \$36,000 from two Service Bureaus (totaling \$962,400). Should the Members and Service Bureaus drop all unused Order Entry Ports, on an annual basis, IEX will collect \$674,400 from its Members and \$28,800 from two Service Bureaus (totaling \$703,200). Finally, IEX subtracted the two projected annual fee revenue totals from the total calculated cost of providing Order Entry Ports.

³⁶ IEX understands that some Members (or Service Bureaus) may also request more Order Entry Ports to enable the ability to send a greater number of simultaneous order messages to IEX by spreading orders over more Order Entry Ports, thereby increasing throughput (i.e., the potential for more orders to be processed in the same amount of time). The degree to which this usage of Order Entry Ports provides any throughput advantage is based on how a particular Member sends order messages to IEX. However, it is important to note that all Order Entry Ports on IEX provide the same throughput.

as inbound message volume increases per Member, the number of requested and assigned Order Entry Ports increases. Table 3, below, presents data from May 2019 evidencing the correlation between a Member's inbound message volume and the projected fee, based on the number of Order Entry Ports assigned to the Member as of May 31, 2019. Members with relatively higher inbound message volume are projected to pay higher fees because they have requested more Order Entry Ports. For example, the four Members that are projected to be subject to monthly fees of \$5,000 or more on average account for 9.6% of May inbound messages (38.4% in the aggregate) and would pay 50.4% of the total amount paid for Order Entry Port fees. In contrast, the 103 Members that, based on their May 2019 Order Entry Port usage are not projected to be subject to any Order Entry Port fees, on average account for only 0.2% of May inbound messages and would pay 0% of the total amount paid for Order Entry Port fees.

As discussed in more detail in the Statutory Basis section, IEX believes that the variance between projected fees and Order Entry Port usage is not unfairly discriminatory because it is based on objective differences in Order Entry Port usage among different Members. IEX notes that the distribution of total inbound message volume is concentrated in relatively few Members, which consume a much larger proportionate share of the Exchange's resources (compared to the majority of Members that send substantially fewer inbound order messages). This distribution of inbound message volume requires IEX to maintain sufficient Order Entry Port capacity to accommodate the higher existing and anticipated message volume of higher volume Members. Thus, IEX's incremental aggregate costs for all Order Entry Ports are disproportionately related to volume from the highest inbound message volume Members. For these reasons, IEX believes it is not unfairly discriminatory for the Members with the highest inbound message volume to pay a higher share of the total Order Entry Port fees.

In this regard, IEX notes that it is not possible to fully synchronize its objective to provide five free Order Entry Ports to all Members, thereby minimizing barriers to entry and encouraging liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Order Entry Ports. IEX believes that the low amount of the proposed fee substantially mitigates any disparate impact.

Table 3.

Fee Range	All Currently Assigned Ports		% of Total Fees Charged (aggregate)	Average % of Inbound Messages Per Member
	# Members	Estimated Average Monthly Fees		
No Fee	103	\$ -	0.0%	.24%
Under \$500	10	\$ 2,800	3.6%	.37%
\$500-\$999	6	\$ 4,500	5.8%	1.56%
\$1,000-\$2,499	7	\$ 12,700	16.5%	1.39%
\$2,500-\$4,999	6	\$ 18,300	23.7%	2.41%
\$5,000+	4	\$ 38,900	50.4%	9.61%

While Members with a business model that results in higher relative inbound message activity are projected to pay higher fees, the level of such fees is based solely on the number of Order Entry Ports deemed necessary by the Member and not on the Member's business model or type of Member. IEX notes that the correlation between percent of message volume and projected Order Entry Port fees is not completely aligned for two main reasons. First, every Member will receive up to five free Order Entry Ports, and those ports become a decreasing percentage of a Member's total Order Entry Ports as the number of such ports increases. Second, Members individually determine how many Order Entry Ports to request, and Members may make different decisions on the appropriate message to Order Entry Port ratio based on facts unique to their individual businesses.

IEX also considered whether there are any differences in the number of Order Entry Ports requested/assigned based on the liquidity “take” versus “provide” ratio³⁷ of a Member’s executed orders. The results are summarized in Table 4 below. This analysis identified some variation among Members at different projected fee levels, but not any differences that are indicative of a disparate impact. The four Members that are projected to incur a monthly charge in excess of \$5,000 had a slightly lower “provide” percentage of 42%, compared to Members not projected to be subject to any charge, which had a “provide” percentage of 55%. Overall, however, Members at all projected fee levels include significant amounts of taking and providing executed orders. Thus, IEX does not believe that these differences reflect any material connection between projected Order Entry Port fees and the take versus provide ratio.

Table 4.

Fee Range	All Currently Assigned Ports		% of Trades that Provide Liquidity
	# Members	Estimated Average Monthly Fees	
No Fee	103	\$ -	55%
Under \$500	10	\$ 2,800	44%
\$500-\$999	6	\$ 4,500	50%
\$1,000-\$2,499	7	\$ 12,700	49%
\$2,500-\$4,999	6	\$ 18,300	55%
\$5,000+	4	\$ 38,900	42%

Consequently, the Exchange believes that this data supports its view that the proposed fee will be fairly allocated among IEX Members based on their usage of Order Entry Ports.

³⁷ An order that takes liquidity executes against orders resting on IEX’s order book. An order that provides liquidity is executed after resting on IEX’s order book.

The proposed fee is effective on filing and will become operative on October 1, 2019.³⁸

The Exchange is not proposing to assess any other fees for connectivity, market data, or membership, each of which is currently provided without charge.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)³⁹ of the Act in general and furthers the objectives of Section 6(b)(4)⁴⁰ 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 also believes that the proposed fee change promotes just and equitable principles of trade and will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5)⁴¹ of the Act.

Reasonableness

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the proposal was subject to significant competitive forces in setting the terms of the proposal. In looking at this question, the Commission considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) “platform” competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Commission will next consider whether there is any substantial countervailing basis to suggest the fee’s terms fail to meet one or more standards

³⁸ Monthly fees will be assessed based on the number of Order Entry Ports assigned to each User as of the first of each month.

³⁹ 15 U.S.C. 78f(b).

⁴⁰ 15 U.S.C. 78f(b)(4).

⁴¹ 15 U.S.C. 78f(b)(5).

under the Exchange Act. If the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

IEX has not previously charged Order Entry Port fees, so it does not have IEX-specific data to support whether or not competitive forces would constrain its ability to set fees for Order Entry Ports. However, IEX notes that Order Entry Port fees at competing exchanges have steadily risen over the last few years,⁴² compared to the pattern of changes in transaction fees,⁴³ which IEX believes demonstrates that competition does not constrain connectivity fees. As noted in the Cost Study, the six largest equities exchanges by market share⁴⁴ all charge between \$550 and \$575 per month to connect to each Order Entry Port.⁴⁵ As also noted in the Cost Study, the extreme differences between IEX's aggregate cost to produce market data, physical connectivity, and logical connectivity products and the prices charged by other exchanges for

⁴² As an example of the steady increase in Order Entry Port fees charged by other exchanges, in 2012 NYSE raised its monthly Order Entry Port fees from \$150 to \$200 per month, and three years later, raised the monthly Order Entry Port fees from \$200 to \$550. See Securities Exchange Act Release No. 68229 (November 14, 2012), 77 FR 69688 (November 20, 2012) (SR-NYSE-2012-60) and Securities Exchange Act Release No. 76072 (October 5, 2015), 80 FR 61258 (October 9, 2015) (SR-NYSE-2015-43).

⁴³ With respect to transaction fees, other exchanges often lower their fees or increase their rebate amounts, thereby lowering their overall transaction fees. See, e.g., Securities Exchange Act Release No. 85636 (April 17, 2019), 84 FR 16062 (April 12, 2019) (SR-CboeBZX-2019-021) (creating a new volume tier that further reduced the fees charged at the pre-existing volume tier) and

Securities Exchange Act Release No. 85373 (March 20, 2019), 84 FR 11379 (March 26, 2019) (SR-NASDAQ-2019-015) (offering an additional \$.00005 per share rebate for displayed quotes/orders that provide liquidity).

⁴⁴ The market share of equities exchanges is calculated from January 1, 2019 to May 31, 2019, based on IEX market data.

⁴⁵ See Cost Study, footnote 24 at 27.

similar products and services clearly suggests that the pricing for all of these classes of products is not constrained by competition.⁴⁶ Furthermore, IEX notes that, as with the market for other exchanges' Order Entry Ports, there is no reasonable substitute for an IEX Order Entry Port to send orders to IEX. Members (and Service Bureaus) could choose not to transact on IEX and send orders to competing venues instead, but their orders may not receive the same execution quality and other protections that IEX is designed to provide. Members may also need connectivity to IEX, as with other exchanges, in order to meet best execution⁴⁷ and order protection⁴⁸ regulatory requirements. With respect to the Order Protection Rule, connectivity to IEX enables a Member to access a protected quotation on IEX in compliance with the rule. A Member (or Service Bureau) could choose to send orders through another Member of IEX as agent or through a Service Bureau, in lieu of connecting directly to IEX. However, in such circumstances IEX expects that the Member (or Service Bureau), subject to any IEX applicable fees, would be subject to charges related to IEX connection fees either directly (via a pass through) or indirectly (via charges that reflect the cost of IEX connection fees). More important, connecting indirectly would add latency that would make this alternative impractical as a competitive matter for many firms that, by virtue of their business, require the fastest available access to the markets on which they trade. Accordingly, IEX does not assert that this approach constitutes a reasonable substitute to connecting directly to IEX's Order Entry Ports.

Further, IEX is not aware of and does not believe that there is any evidentiary support for the proposition that competition at the "platform level" constrains market data and connectivity fees in general, including logical connectivity fees of the type proposed in this filing.

⁴⁶ See Cost Study, footnote 24 at 18-19, 24-25, and 31-32, respectively.

⁴⁷ FINRA Rule 5310.

⁴⁸ 17 CFR 242.611 ("Order Protection Rule").

Thus, IEX believes that in the current market structure, the market for connectivity to IEX and other exchanges is not subject to significant competitive forces sufficient to ensure the reasonableness of Order Entry Port fees, and IEX is not relying on an argument that the fees proposed in this filing are justified based on market competition.

Instead, IEX believes the proposed fee is fair and reasonable as a form of partial cost recovery for IEX's aggregate costs of offering logical ports to its Members and Service Bureaus.⁴⁹ The proposed fees are expected to generate annual revenue of between \$703,200 and \$962,400,⁵⁰ providing a partial cost recovery to IEX for the aggregate costs of offering logical port connections, based on a methodology that narrowly limits the aggregate cost elements considered to those closely and directly related to the particular product offering. Thus, based on IEX's conservative cost methodology and accounting for the costs of maintaining excess Order Entry Port capacity, the proposed fees are projected to yield at most 63.8% of the annual aggregate costs of offering the related product (\$962,400 divided by \$1,508,649). While IEX believes that exchanges could, consistent with the Act, charge fees that represent a reasonable markup over cost if they appropriately justify such fees, this proposed fee is designed to provide only a partial cost recovery of IEX's aggregate costs.

Further, IEX believes that a fee of \$100 per Order Entry Port is reasonable in relation to the per port cost estimate in the Cost Study because: (i) considering the five free ports for each User and the fact that some Order Entry Ports are not used but are held in reserve by the

⁴⁹ See In the Matter of the Application of Securities Industry and Financial Markets Ass'n for Review of Action taken by NYSE Arca, Inc. and Nasdaq Stock Market, LLC, Securities Exchange Act Release No. 84432, at 51 (October 16, 2018) ("the exchanges must demonstrate that the fees are fair and reasonable, not that they are less expensive than competing products")

⁵⁰ See note 35 *supra* for the calculation of IEX's projected annual Order Entry Port fee revenue.

Exchange to meet increased capacity needs, IEX's aggregate cost is greater than \$100 per available Order Entry Port; (ii) the Cost Study estimate was based on conservative assumptions that allocated only those costs most directly related to the product offering; and (iii) even ignoring these other factors, the \$100 per port fee represents a modest increase over the \$83 cost estimate and dramatically less than estimates of percentage markups for logical port fees charged by other exchanges.⁵¹

IEX also believes the proposed fee is a reasonable means of encouraging Users to be efficient in the number of logical ports they reserve for use, with the benefits to overall system efficiency described above with respect to unused Order Entry Ports.

Equitable Allocation and Non-Discrimination

IEX believes that its proposed fee is reasonable, fair and equitable, and not unfairly discriminatory because it is designed to align fees with services provided, will apply equally to all Members that are assigned Order Entry Ports (either directly or through a Service Bureau), and will minimize barriers to entry by providing all Members with five free Order Entry Ports. As described in the Purpose section, a significant majority of Members will not be subject to any fee, and only four Members will potentially be subject to a fee of over \$5,000 per month, based on current usage. In contrast, as described above, other exchanges generally charge in excess of \$500 per Order Entry Port without providing any free Order Entry Ports.⁵² Even for Members that choose to maintain more than five Order Entry Ports, IEX believes that the cost-based fee of \$100 is low enough that it will not operate to restrain any Member's ability to maintain the number of Order Entry Ports that it determines are consistent with its business objectives. The small number of Members projected to be subject to the highest fees will still pay considerably

⁵¹ See Cost Study, footnote 24 at 31-32.

⁵² See Cost Study, footnote 24 at 27.

less than competing exchanges charge.⁵³ Further, the number of assigned Order Entry Ports will continue to be based on decisions by each Member, including the ability to reduce fees by discontinuing unused Order Entry Ports.

The Exchange believes that providing five free Order Entry Ports is fair and equitable, and not unfairly discriminatory because it will enable all Members to access IEX free of charge, thereby encouraging order flow and liquidity from a diverse set of market participants, facilitating price discovery and the interaction of orders. IEX believes that five Order Entry Ports is an appropriate number to provide for free because it aligns with the number of such ports currently maintained by a substantial majority of Members, as discussed in the Purpose section. Based on a review of Order Entry Port usage, 103 of 136 connected Members are not projected to be subject to any Order Entry Port fees under the proposed fee. As described in the Purpose section, while Order Entry Port usage is concentrated in a few relatively larger Members, the number of such ports requested is not based on the size or type of Member but rather correlates to a Member's inbound message volume to IEX. Further, as discussed in the Purpose section, Members with relatively higher inbound message volume also request (and are assigned) more Order Entry Ports than other Members, which in turn means they account for a disproportionate share of IEX's aggregate costs for providing Order Entry Ports. Therefore, IEX believes it is not

⁵³ Notably, a Member that pays \$10,000 in monthly Order Entry Port fees to IEX (meaning the Member is assigned 105 Order Entry Ports, with the first five being free), would pay \$57,550 each month to maintain the same number of sessions on NYSE (assuming the Member was not a DMM connected to NYSE's DMM Gateway, which provides the first 12 Order Entry Ports free of charge) and \$60,375 each month to maintain the same number of sessions on NASDAQ. See NYSE Price List 2019, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf and Nasdaq General Equity and Options Rule, Equity 7 Section 115(b) ("Ports and other Services") available at http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_2_2&manual=%2Fnasdaq%2Fmain%2Fnasdaq-llcrules%2F.

unfairly discriminatory for the Members with higher inbound message volume to pay a modestly higher proportionate share of the Order Entry Port fees.

Accordingly, the Exchange believes that the fee will be applied consistently with its specific purpose – to partially recover IEX’s aggregate costs, encourage the efficient use of Order Entry Ports, and align fees with Members’ Order Entry Port and system usage.

The Exchange further believes that the proposed fees are reasonable, fair and equitable, and non-discriminatory because they will apply to all Members in the same manner and are not targeted at a specific type or category of market participant engaged in any particular trading strategy. All Members (or Service Bureaus) will receive five free Order Entry Ports and pay the same \$100 per Order Entry Port for each additional Order Entry Port. Each Order Entry Port is identical, providing connectivity to IEX on identical terms. While the proposed fee will result in a different effective “per unit” rate for different Members (or Service Bureaus) after factoring in the five free Order Entry Ports, the Exchange does not believe that this difference is material given the overall low fee of \$100 per Order Entry Port. Because the first five Order Entry Ports are free of charge, each entity will have a “per unit” rate of less than \$100. Further, the fee is not connected to volume-based tiers. All Members will be subject to the same fee schedule, regardless of the volume sent to or executed on IEX. The fee also does not depend on any distinctions between Members, customers, broker-dealers, or any other entity. The fee will be assessed solely based on the number of Order Entry Ports an entity selects and not on any other distinction applied by IEX. While entities that send relatively more inbound messages to IEX may select more Order Entry Ports, thereby resulting in higher fees, that distinction is based on decisions made by each Member and the extent and nature of the Member's business on IEX rather than application of the fee by IEX. Members (and their Service Bureaus) can determine

how many Order Entry Ports they need to implement their trading strategies effectively. IEX proposes to offer multiple Order Entry Ports at a low fee to enable all Members to purchase as many Order Entry Ports as their business needs dictate in order to optimize throughput and manage latency across the Exchange.

Notwithstanding that Members with the highest number of Order Entry Ports will pay a greater percentage of the total projected fees than is represented by their Order Entry Port usage, IEX does not believe that the proposed fee is unfairly discriminatory. As discussed in the Purpose section, it is not possible to fully synchronize IEX's objective to provide five free Order Entry Ports to all Members, thereby minimizing barriers to entry and incentivizing liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Order Entry Ports. As proposed, IEX is providing a reasonable number of Order Entry Ports to each Member (or Service Bureau) without charge. Any variance between projected fees and Order Entry Port usage is attributable to objective differences among Members in terms of the number of Order Entry Ports they determine are appropriate based on their trading on IEX. Further, IEX believes that the low amount of the proposed fee (which in the aggregate is projected to only partially recover IEX's directly-related costs) mitigates any disparate impact.

By way of comparison, IEX notes that differential pricing based on the volume of trading activity is common in other exchanges' fee structures, including, for example, the use of volume "tiers" that provide discounts and/or higher rebates based upon various volume-based measures of activity.⁵⁴ Under these pricing structures, a lower volume market participant pays substantially more on a per-transaction basis than higher volume members, with the stated goal

⁵⁴ See, e.g., Securities Exchange Act Release No. 85864 (May 15, 2019), 84 FR 23109 (May 21, 2019) (SR-NYSE-2019-24).

of incentivizing certain types of trading activity on the exchange. In contrast, by offering five free Order Entry Ports to each User, IEX is seeking to maintain incentives for a broad cross-section of participants to trade on the Exchange, while the low per port fee applies consistently to all similarly situated market participants in a way designed to avoid imposing a material business cost on any participant.

IEX also believes that it is consistent with the Act to apply the fee (including five free Order Entry Ports) directly to Service Bureaus providing Order Entry Ports to one or more Members rather than to such Members directly because such Order Entry Ports may be shared by multiple Members and applying the fee to such Members directly would result in multiple billing for the same service. To illustrate this point, in the case of an Order Entry Port subject to the \$100 fee (i.e., not included in the first five free Order Entry Ports), if a Service Bureau provided access to that Order Entry Port to five Members, and if IEX charged each Member for the Order Entry Port, each of those Members would pay IEX \$100 for the Order Entry Port, totaling \$500, whereas a Member subscribing directly to the same Order Entry Port would pay only \$100 for the connection.⁵⁵

Further, the Exchange believes that the proposed fee is consistent with the Exchange Act because it will support its Reg SCI compliance obligations, as described in the Purpose section.

IEX also believes that it is reasonable, equitable, and not unfairly discriminatory to base its billing for Order Entry Ports on the number of Order Entry Ports assigned to each User as of the first day of each month. IEX believes that this approach is fair because Members (and Service Bureaus) will have a reasonable understanding and expectation of the cutoff date for

⁵⁵ As discussed in note 34, above, IEX expects two Service Bureaus to be charged a total of \$3,000 per month for their Order Entry Ports. This fee could be reduced to as little as \$2,400 per month if the two Service Bureaus disconnect their unused Order Entry Ports.

determining whether a User has more than five assigned Order Entry Ports. Additionally, IEX's decision to wait more than a month for this proposed fee to take effect will not only allow time for market participants to comment on the proposed fee, it will also allow Users time to determine if they want to disconnect any of their assigned Order Entry Ports before the first month in which IEX will charge for assigned Order Entry Ports in excess of five.

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee will enable a broad range of IEX Members to continue to connect to IEX, thereby facilitating the economically efficient execution of securities transactions on IEX, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on IEX when it is the best market.

For the foregoing reasons, the Exchange believes that the proposed fee is reasonable, equitably allocated, and not unfairly discriminatory.

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 intramarket or intermarket 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. The proposed fee is a cost-based fee, significantly less than Order Entry Port fees charged

by competing venues, that is designed to enable the Exchange to partially recoup its applicable costs as described in the Purpose and Statutory Basis sections. The proposed fee is not a tiered pricing structure that requires minimum volume levels to realize economic pricing benefits. The Order Entry Ports to which the fee applies all have the same characteristics, and IEX is not proposing to charge a higher fee for a “high performance” alternative.

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 because all Members (and their Service Bureaus) are entitled to five free Order Entry Ports and subject to the same low, cost-based fee for additional Order Entry Ports. While different total fees would be assessed depending on the number of Order Entry Ports a Member (or Service Bureau) requests, these different fees are not based on the type of Member requesting the Order Entry Port(s) but on the number of such ports the Member (or Service Bureau) requests, and each Member (or Service Bureau) can determine the number of such ports to reserve. Further, providing five free Order Entry Ports is designed to avoid creating barriers to entry for smaller Members, thereby promoting intramarket competition. In addition, even Members subject to relatively higher fees for more Order Entry Ports will still be subject to a relatively low aggregate fee (and significantly less than competing exchanges, as described above) and thus the proposed fee will not operate as a barrier to entry for such Members or impose a significant business cost burden on such Members relative to their levels of business activity. Finally, as described in the Purpose section, the proposed fee change is designed to assist the Exchange in complying with its Reg SCI compliance obligations to have levels of capacity adequate to maintain IEX’s operational capability and promote the maintenance of fair and orderly markets, thereby promoting both intermarket and intramarket competition by

enabling IEX to support a robust trading environment for its Members and compete with other equities venues.

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)⁵⁶ 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)⁵⁷ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2019-07 on the subject line.

⁵⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁷ 15 U.S.C. 78s(b)(2)(B).

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-IEEX-2019-07. 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 offices of the Exchange. 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-2019-07, 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.⁵⁸

Jill M. Peterson
Assistant Secretary

⁵⁸ 17 CFR 200.30-3(a)(12).