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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82127; File No. SR-IEX-2017-40]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify its Fee Schedule, Pursuant to IEX Rule 15.110(a) and (c), to Adopt Pricing for Orders That Execute in an IEX Auction for IEX-listed Securities

November 20, 2017

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on (date), the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to adopt pricing for orders

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.

that execute in an IEX Auction⁶ for IEX-listed securities pursuant to Rule 11.350. Changes to the Fee Schedule pursuant to this proposal are effective upon filing, and will be operative once the Exchange begins conducting IEX Auctions in IEX-listed securities.⁷ The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 10, 2017, the Commission approved a proposed rule change by the Exchange to adopt rules governing auctions, including dissemination of auction-related market data, for securities listed on the Exchange pursuant to Chapter 14 of the IEX Rule Book.⁸ The Exchange proposes to update its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to add new Fee

⁶ IEX Auctions include the daily Opening and Closing Auctions (Rule 11.350(c) and (d), respectively), as well as IPO Auctions related to an initial public offering of securities (Rule 11.350(e)), Halt Auctions following a regulatory halt (Rule 11.350(e)), and Volatility Auctions following a trading pause pursuant to the Limit Up-Limit Down Plan (Rule 11.350(f)).

⁷ See IEX Trader Alert #2017-015, available on the Exchange public website.

⁸ See Securities and Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017) (SR-IEX-2017-10).

Codes to identify the fees applicable to orders that execute in IEX Auctions. The IEX Auction processes are designed to maximize participation in the auctions in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price. The Exchange believes that fees are an important component of the IEX Auction processes, in that execution fees can influence the trading behavior of Members by creating economic incentives (and disincentives) for Members that participate in IEX Auctions. Thus, the Exchange is proposing fees that are similarly designed to incentivize participation in IEX Auctions in order to further support an efficient price discovery process and greater opportunity for execution at the official auction price.

The Exchange proposes to apply the following new Fee Codes:

- Executions in the Opening Auction⁹ will receive Fee Code “O”
- Executions in the Closing Auction¹⁰ will receive Fee Code “C”
- Executions in a Halt Auction¹¹ or Volatility Auction¹² will receive Fee Code “H”
- Executions in an IPO Auction¹³ will receive Fee Code “N”

As proposed, non-displayed orders on the Continuous Book¹⁴ that are executed in an IEX Auction will receive the applicable auction Fee Code on their execution reports and will be subject to a fee of \$0.0003 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

⁹ See Rule 11.350(c).

¹⁰ See Rule 11.350(d).

¹¹ See Rule 11.350(e).

¹² See Rule 11.350(f).

¹³ See Rule 11.350(e).

¹⁴ See Rule 11.350(a)(4).

executed below \$1.00) (the “Auction Match Fee”). Furthermore, all orders on the Auction Book¹⁵ that are executed in an IEX Auction will receive the applicable auction Fee Code on their execution reports and will also be subject to the Auction Match Fee of \$0.0003 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).

The Exchange believes that the proposed Auction Match Fee for non-displayed orders on the Continuous Book and all orders on the Auction Book that are executed in an IEX Auction are designed to incentivize participation in IEX Auctions by providing a cost-effective execution mechanism that offers Members an opportunity to receive executions at the official opening, re-opening, or closing price of an IEX-listed security. The Exchange believes the proposed fees enhance the price discovery process by incentivizing Members to enter interest in IEX-listed securities into IEX Auctions, rather than investing resources into developing and maintaining their own off-exchange internalization mechanisms, or utilizing the internalization mechanisms of competing brokers and alternative trading systems, and entering only the balance to participate in an IEX Auction.¹⁶ The Exchange believes incentivizing broader participation will increase overall liquidity in the IEX Auctions, and enhance the price discovery process, particularly in the Opening and Closing Auctions, which provide a critical price discovery mechanism to establish the official opening and closing prices for IEX-listed securities at the start and end of each

¹⁵ See Rule 11.350(a)(1).

¹⁶ See, e.g., Exhibit F of Instinet LLC’s Form ATS, which describes its MOC Crosses that match buy and sell orders for certain U.S. equity securities marked “market on close”. See also, Table 6 in Appendix A of Bats BZX Exchange’s (“Bats”) response letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, to Secretary Brent J. Fields, dated August 2, 2017, in support of the proposed Bats Market Close. Table 6 illustrates significant volume in shares of FedEx, Proctor & Gamble, and Cardinal Health that was executed at the official closing price at off exchange venues. See Securities and Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-BatsBZX-2017-34).

trading day.

Moreover, orders that were displayed on the Continuous Book during the Pre-Market Session¹⁷ or Regular Market Session¹⁸ that are executed in the Opening Auction or Closing Auction, respectively, will receive the applicable auction Fee Code, as well as existing Fee Code L (Displayed Match Fee).¹⁹ Thus, such orders 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.²⁰ 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 leading into IEX Auctions.

The Exchange notes that the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity,²¹ and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry,²² are not applicable to

¹⁷ See Rule 1.160(z).

¹⁸ See Rule 1.160(gg).

¹⁹ The Exchange currently does not charge any fee to Members for executions on IEX that provide or take resting interest with displayed priority (i.e., an order or portion of a reserve order that is booked and ranked with display priority on the Order Book either as the IEX best bid or best offer (“BBO”), or at a less aggressive price). This pricing is referred to by the Exchange as “Displayed Match Fee” with a Fee Code of ‘L’ provided by the Exchange on execution reports. See the Investors Exchange Fee Schedule, available on the Exchange public website.

²⁰ See IEX Fee Schedule, Transaction Fees, bullet three. The Exchange also notes that there is no Continuous Book prior to a Halt, Volatility, or IPO auction, and thus no opportunity for a Member to have a displayed order on the Continuous Book that is executed in such auctions.

²¹ See supra note 19.

²² The Exchange does not charge any fee to Members (on a per MPID basis) for executions on IEX that remove resting interest with non-displayed priority where (i) the liquidity removing order was displayable (i.e., the order would have booked and displayed if

IEX Auctions. IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers, rendering 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, inapplicable.

The following table is designed to illustrate the various Fee Codes and execution fees that will be applied to orders that may be executed in an IEX Auction:

Order Details	Opening Auction	Closing Auction	Halt / Volatility Auction	IPO Auction	Fee for executions >= \$1.00	Fee for executions < \$1.00
Non-displayed orders resting on the Continuous Book that execute in the Opening or Closing Auction ²³	O	C	Not applicable	Not applicable	\$0.0003	0.30% of TDVT ²⁴

posted to the Order Book), and (ii) on a monthly basis, at least 90% of the liquidity removing MPID's aggregate executions of displayable orders provided liquidity during such calendar month. In such transactions, the liquidity providing non-displayed interest is subject to the Non-Displayed Match Fee.

²³ The Exchange notes that non-displayed orders resting on the Continuous Book that execute in the auction will no longer receive Fee Code "I", and will instead receive the applicable auction Fee Code. Orders taking or adding non-displayed liquidity prior to or after an IEX Auction, will continue to receive Fee Code I, either alone or in conjunction with other applicable Fee Codes.

²⁴ "TDVT" means the total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction. See IEX Fee Schedule, Definitions, bullet five.

Displayed orders resting on the Continuous Book that execute in the Opening or Closing Auction	O, L	C, L	Not applicable	Not applicable	FREE	FREE
All orders on the Auction Book that execute in an IEX Auction	O	C	H	N	\$0.0003	0.30% of TDVT

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²⁵ of the Act in general, and furthers the objectives of Sections 6(b)(4)²⁶ 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.

IEX believes that its proposed pricing for orders executed in an IEX Auction is reasonable and equitable because, as discussed above, the proposed fees are designed to incentivize participation in IEX Auctions by providing a cost-effective execution mechanism that offers Members an opportunity to receive executions at the official opening, re-opening, or closing price of an IEX-listed security. The Exchange believes the proposed fees may also incentivize Members to enter more interest into IEX Auctions, rather than investing resources into developing and maintaining their own off-exchange internalization mechanisms, or utilizing the internalization mechanisms of competing brokers and alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can

²⁵ 15 U.S.C. 78f.

²⁶ 15 U.S.C. 78f(b)(4).

readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. However, in the case of auctions, the primary listing market receives the majority of order flow seeking execution at the official opening, re-opening, and closing prices of its listed securities, because such price is generally established by its auction processes. As a result, the Exchange believes that, to date, the Nasdaq Stock Market (“Nasdaq”) and the New York Stock Exchange (“NYSE”) charge auction fees that are considerably higher than those charged during continuous trading, when accounting for the fact that fees for executions in the auction processes are assessed on both sides of each transaction, and a large portion of the fees collected for removing liquidity during continuous trading are largely earmarked to pay rebates to liquidity providers.²⁷ Consequently, the Exchange believes there is considerable demand from market participants seeking an alternative to the primary market’s auction processes, as evidenced by the recent proposal from Bats BZX Exchange, Inc. (“Bats”) to offer a closing process to match orders in non-listed securities at the official closing price published by the primary listing market (the “Bats Market Close”).²⁸ Therefore, the Exchange has designed its proposed fees to meet the demands of market participants by offering competitive pricing to compete for auction order

²⁷ For example, the Nasdaq Stock Market charges fees ranging between \$0.0008 - \$0.0016 for orders executed in the Nasdaq Closing Cross, resulting in net fee capture ranging between \$0.0016 - \$0.0032 per share executed. In contrast, during continuous trading, Nasdaq pays rebates ranging between \$0.0015 - \$0.00305 to liquidity providing orders, and charges a fee of \$0.0030 to liquidity taking orders, resulting in net fee capture ranging between -\$0.00005 - \$0.0015 per share executed. Similarly, NYSE charges fees ranging between \$0.0008 - \$0.0011 for MOC and LOC orders executed in the NYSE Closing Auction, resulting in net fee capture ranging between \$0.0016 and \$0.0022 per share executed. In contrast, during continuous trading, NYSE pays a rebate ranging between \$0.0010 - \$0.0022 to liquidity providing orders for non-market makers and non-Supplemental Liquidity providers, and assuming a member qualifies for the highest removal tier, NYSE charges \$0.00275 to liquidity taking orders, resulting in net fee capture ranging between \$0.00055 - \$0.00175 per share executed.

²⁸ See Securities and Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-BatsBZX-2017-34).

flow with trading centers such as Bats (if the Bats Market Close is approved), as well as other off-exchange facilities.²⁹

As discussed above, IEX also believes that it is appropriate, reasonable, and consistent with the Act not to charge a fee for an order executed in an IEX Auction that was displayed on the Continuous Book prior to the Opening or Closing Auction. As with the existing fee structure for the 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, consistent with the overall goal of enhancing market quality. IEX believes that, as with the existing Displayed Match Fee, not charging a fee for the execution of a previously displayed order is equitable and not unfairly discriminatory because it is designed to facilitate the entry of, and enhance execution opportunities for, displayable orders, thereby further incentivizing entry of displayed orders.

Furthermore, the Exchange notes that the proposed fees are nondiscriminatory because they will apply uniformly to all Members, and all Members have an equal opportunity to submit any type of Auction Eligible Order,³⁰—including both displayed and non-displayed orders on the Continuous Book, or orders that queue on the Auction Book—for execution in an IEX Auction, using the order types made available to all Members on a fair and equal basis. In addition, the Exchange believes that the proposed fees for IEX Auctions are appropriate, reasonable, and consistent with the Act, because such fees are within the range of transaction fees charged by other exchanges for their respective Auction processes.³¹ Furthermore, although orders that

²⁹ See supra note 16.

³⁰ See Rule 11.350(a)(2).

³¹ For example, the Nasdaq Stock Market charges fees ranging from \$0.00085 - \$0.0015 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

execute in IEX Auctions may be subject to different fees than similar orders executed during continuous trading, the Exchange notes that other exchanges also charge differential pricing for orders that execute in their opening process.³² Moreover, as described above, the Exchange believes the proposed fees for orders executed in an IEX Auction are appropriate, reasonable, and consistent with the Act, because such fees are designed to incentivize participation in IEX Auctions, in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price.

Additionally, the Exchange believes that its proposed Fee Codes for orders executed in an IEX Auction, which will be provided on 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 an IEX Auction.

As discussed above, the Exchange does not believe that it is appropriate to provide the Internalization Fee, or the Displayed Match Fee to non-displayed orders that execute in an IEX Auction, because IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers. 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 an IEX Auction, since such orders are not able to remove resting interest on entry in an IEX Auction, because they are either queued on the

securities. Similarly, NYSE charges fees ranging from \$0 for closing off-set orders and orders on the continuous book that are executed in the auction, to \$0.0011 for MOC and LOC orders (for members that don't qualify for MOC/LC Tier 1 or 2).

³² See id.

Auction Book and not displayed, or resting displayed on the Continuous Book.³³ Moreover, as noted above, the IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers, or their respective display status on the Auction Book.

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 when approving the existing IEX fees, or the auction 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 draw additional volume to the Exchange for IEX Auctions. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee

³³ The Exchange notes that it is of course possible for a displayed order to remove non-displayed liquidity during continuous trading on the Continuous Book; however, such execution would not be part of an IEX Auction, and would be subject to the Exchange's existing Fee Schedule.

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 between 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 an IEX Auction, but based on the type of order entered, and all Members can submit any of IEX's permissible order types.

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)³⁴ 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)³⁵ of the Act to determine whether the proposed rule change should be approved or disapproved.

³⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁵ 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 email to rule-comments@sec.gov. Please include File Number SR-IEX-2017-40 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2017-40. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at www.iextrading.com. 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-2017-40 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.³⁶

Eduardo A. Aleman,

Assistant Secretary.

³⁶ 17 CFR 200.30-3(a)(12).

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