

pricing out of the Initiating Participant's complete control. The proposal is structured to offer the same enhancement to all market participants and would not impose a competitive burden on any participant. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change is pro-competitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges. The Exchange notes that not having the Complex CUBE Auction at the Exchange places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-05 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-NYSEAMER-2018-05. This file number should be included on 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 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. 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-NYSEAMER-2018-05 and should be submitted on or before March 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2018-04625 Filed 3-6-18; 8:45 am]

**BILLING CODE P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82799; File No. SR-IEX-2018-03]

**Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Auction Rules Governing the Pricing of Non-Displayed Orders Resting on the Continuous Book for the Opening and Closing Auctions**

March 1, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 16, 2018, Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 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 Securities and Exchange Commission ("Commission") a proposed rule change to amend Rules 11.350(a)(2) and 11.350(a)(30) to properly reflect the manner in which the Exchange will handle non-displayed orders resting on the Continuous Book<sup>6</sup> within the Reference Price Range<sup>7</sup> in crossed and one-sided markets<sup>8</sup> in the Opening and Closing Auctions,<sup>9</sup> and resolve a conflict with the Exchange's existing rules regarding the pricing of such orders. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act<sup>10</sup> and provided the Commission with the

<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.

<sup>6</sup> See Rule 11.350(a)(4).

<sup>7</sup> See Rule 11.350(a)(30).

<sup>8</sup> A crossed market refers to a scenario in which the protected national best bid ("Protected NBB") is greater than the protected national best offer ("Protected NBO"). A one-sided market refers to a scenario in which there is only a Protected NBB or Protected NBO. See Rule 1.160(bb).

<sup>9</sup> See Rules 11.350(c) and (d), respectively.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>68</sup> 17 CFR 200.30-3(a)(12).

notice required by Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The purpose of this proposed rule change is to amend Rules 11.350(a)(2) and 11.350(a)(30) to properly reflect the manner in which the Exchange will handle non-displayed orders resting on the Continuous Book within the Reference Price Range in crossed and one-sided markets in the Opening and Closing Auctions, and resolve a conflict with the Exchange's existing rules regarding the pricing of such orders.

On August 4, 2017, the Commission approved a proposed rule change filed by the Exchange to adopt rules governing auctions in IEX-listed securities, including Opening and Closing Auction processes that establish IEX Official Opening and Closing Prices for each trading day.<sup>12</sup> The Exchange intends to launch a listings program for corporate issuers in 2018. IEX Rule 11.350 is applicable to auctions in IEX-listed securities.

#### IEX Opening Auction

Pursuant to Rule 11.350(c)(1), Users may submit orders eligible for execution in the Opening Auction<sup>13</sup> at the beginning of the Pre-Market Session,<sup>14</sup> which begins at 8:00 a.m.<sup>15</sup> Any orders designated for the Opening Auction

Book<sup>16</sup> will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. In addition to orders on the Opening Auction Book, limit orders on the Continuous Book with a time-in-force of SYS or GTT are eligible to execute in the Opening Auction ("Pre-market Continuous Book").<sup>17</sup> The Exchange does not place any restrictions on the entry of orders to the Pre-market Continuous Book to avoid unnecessary disruptions to continuous trading.

Pursuant to proposed Rule 11.350(c)(2), beginning at the Opening Auction Lock-in Time<sup>18</sup> and updated every one second thereafter, the Exchange will disseminate IEX Auction Information<sup>19</sup> via electronic means. The Exchange will attempt to conduct an Opening Auction for all IEX-listed securities at the start of Regular Market Hours<sup>20</sup> (*i.e.*, 9:30 a.m.) in accordance with the clearing price determination process set forth in Rule 11.350(c)(2)(B). All orders eligible for execution in the Opening Auction (*i.e.*, orders on the Opening Auction Book and orders on the Pre-Market Continuous Book that are not Auction Ineligible Orders<sup>21</sup>) are Auction Eligible Orders.<sup>22</sup> Auction Eligible Orders will be ranked and maintained in accordance with IEX auction priority, pursuant to Rule 11.350(b). Moreover, pursuant to Rule 11.350(a)(2), non-displayed buy (sell) orders on the Pre-Market Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price,<sup>23</sup> but will be ranked and eligible for execution in the Opening Auction match at the order's resting price.<sup>24</sup>

<sup>16</sup> Pursuant to Rule 11.350(a)(1)(A), orders on the Opening Auction Book would include MOO orders, LOO orders, market orders with a time-in-force of DAY, and limit orders with a time-in-force of DAY or GTX. See Rules 11.350(a)(25), 11.350(a)(21), 11.190(a)(2)(E)(iii), and 11.190(a)(1)(E)(iii) and (v), respectively.

<sup>17</sup> See Rule 11.190(a)(1)(E)(iv) and (vi).

<sup>18</sup> See Rule 11.350(a)(22).

<sup>19</sup> See Rule 11.350(a)(9).

<sup>20</sup> See Rule 1.160(gg).

<sup>21</sup> See Rule 11.350(a)(3).

<sup>22</sup> See Rule 11.350(a)(2).

<sup>23</sup> Note, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price and the Indicative Clearing Price disseminated in IEX Auction Information as set forth in Rule 11.350(a)(9)(E).

<sup>24</sup> The Exchange notes that in the case of an IPO, Halt, or Volatility Auction, there is no continuous trading and therefore no Continuous Book. Accordingly, there would be no non-displayed interest on the Continuous Book to which this functionality would apply.

Thus, non-displayed orders will influence the Opening Auction clearing price if such price is at or outside the Reference Price Range, but not if the clearing price is within the Reference Price Range.

#### IEX Closing Auction

Similar to the Opening Auction, pursuant to Rule 11.350(d)(1), the Exchange allows Users to submit orders eligible for execution in the Closing Auction<sup>25</sup> at the beginning of the Pre-Market Session, which begins at 8:00 a.m. Any orders designated for the Closing Auction Book<sup>26</sup> are queued until 4:00 p.m. (or such earlier time as the Regular Market Session<sup>27</sup> ends on days that IEX is subject to an early closing) at which time they will be eligible to be executed in the Closing Auction. In addition to orders on the Closing Auction Book, all limit and pegged orders resting on the Continuous Book with a time-in-force of DAY, GTX, GTT, or SYS are eligible for execution in the Closing Auction, ("Regular-Market Continuous Book").<sup>28</sup> Similar to the Opening Auction, the Exchange does not place any restrictions on the entry of orders to the Regular-Market Continuous Book to avoid unnecessary disruptions to continuous trading.

Pursuant to Rule 11.350(d)(2)(A), beginning at the Closing Auction Lock-in Time<sup>29</sup> and updated every one second thereafter, the Exchange will disseminate IEX Auction Information via electronic means. The Exchange will attempt to conduct a Closing Auction for all IEX-listed securities at 4:00 p.m., or such earlier time as the Regular Market Session ends on days that IEX is subject to an early closing, in accordance with the clearing price determination process set forth in Rule 11.350(d)(2)(B). All orders eligible for execution in the Closing Auction (*i.e.*, orders on the Closing Auction Book and orders on the Regular-Market Continuous Book) are Auction Eligible Orders. Auction Eligible Orders will be ranked in accordance with IEX Auction Priority set forth in Rule 11.350(b). Moreover, pursuant to Rule 11.350(a)(2),

<sup>25</sup> See Rule 11.350(d).

<sup>26</sup> Pursuant to Rule 11.350(a)(1)(B), orders on the Closing Auction Book would include MOC orders and LOC orders. See Rules 11.350(a)(24), and 11.350(a)(20).

<sup>27</sup> See Rule 1.160(gg).

<sup>28</sup> The following types of orders are not eligible for execution in the Closing Auction: market orders (except MOC orders) and orders with a time-in-force of IOC or FOK, because Market orders entered during the Regular Market Session and orders marked IOC or FOK do not rest on the Continuous Book, and therefore are not eligible for the Closing Auction.

<sup>29</sup> See Rule 11.350(a)(22).

<sup>11</sup> 17 CFR 240.19b-4.

<sup>12</sup> See Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017). See also Rules 11.350(a)(12) and (10), respectively.

<sup>13</sup> See Rule 11.350(c).

<sup>14</sup> See Rule 1.160(z).

<sup>15</sup> All times are in Eastern Time.

non-displayed buy (sell) orders on the Regular-Market Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price,<sup>30</sup> but will be ranked and eligible for execution in the Closing Auction match at the order's resting price. Thus, as with the Opening Auction, non-displayed orders resting on the Regular-Market Continuous Book will influence the Closing Auction clearing price if such price is at or outside the Reference Price Range, but not if the clearing price is within the Reference Price Range.

As described in the rule filing proposing rules governing auctions in IEX-listed securities,<sup>31</sup> the Exchange's handling of non-displayed interest on the Continuous Book resting within the Reference Price Range in the Opening and Closing Auction is designed to protect the anonymity of resting non-displayed interest on the Continuous Book during the dissemination of IEX Auction Information. Specifically, the Exchange believes that without such treatment, information leakage would occur if the Indicative Clearing Price is closer to the midpoint of the NBBO than the Reference Price<sup>32</sup> that is disseminated via IEX Auction Information. This would indicate that there is non-displayed interest resting on the Continuous Book for at least the size of the imbalance and priced at least as aggressively as the Reference Price.

#### Reference Price Range

For the Opening or Closing Auction, the Reference Price Range is defined in Rule 11.350(a)(30) as the prices between and including the Protected NBB and Protected NBO, if the Protected NBBO is valid. The Protected NBBO is valid when there is both a Protected NBB and Protected NBO in the security (*i.e.*, the market is *not* one-sided or zero-sided), the Protected NBBO is not crossed, and the midpoint of the Protected NBBO is less than or equal to the Maximum Percentage<sup>33</sup> away from both the Protected NBB and Protected NBO. The

Maximum Percentage values set forth in Rule 11.350(a)(26) are as follows:

- 5% if the Protected Midpoint Price<sup>34</sup> is less than or equal to \$25.00;
- 2.5% if the Protected Midpoint Price is greater than \$25.00 but less than or equal to \$50.00; or
- 1.5% if the Protected Midpoint Price is greater than \$50.00.

In the event that the Protected NBBO is not valid, the Reference Price Range will be equal to the IEX best bid and offer ("IEX BBO"), if the IEX BBO is valid. The IEX BBO is valid where there is both an IEX best bid and IEX best offer in the security (*i.e.*, the IEX BBO is *not* one-sided or zero-sided), and the midpoint of the IEX BBO is less than or equal to the Maximum Percentage away from both the IEX best bid and the IEX best offer. Where the IEX BBO is not valid, the Reference Price Range is set to the higher (lower) price of the Final Consolidated Last Sale Eligible Trade,<sup>35</sup> or the Protected NBB (NBO), if not crossed, or the IEX best bid (offer).

#### Proposed Changes

During development and testing of the functionality for Opening and Closing Auctions the Exchange identified that in crossed markets, Rule 11.350(a)(2) does not properly reflect the Exchange's planned handling of non-displayed orders resting on the Continuous Book within the Reference Price Range, and conflicts with the Exchange's existing rules regarding the pricing of orders. Specifically, Rule 11.350(a)(2) states in relevant part that non-displayed buy (sell) orders on the Continuous Book will be priced to the Protected NBB (NBO) for the purposes of determining the clearing price. However, as discussed above, the Reference Price Range is generally—but not always—equal to the Protected NBBO.<sup>36</sup> Therefore, when the Reference Price Range does not equal the Protected NBBO, pricing non-displayed buy (sell) orders to the Protected NBB (NBO) may

<sup>34</sup> *Id.*

<sup>35</sup> See Rule 11.350(a)(6), which defines the Final Consolidated Last Sale Eligible Trade as the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape, rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer. If no such transaction was executed in accordance with the preceding sentence, then the Final Consolidated Last Sale Eligible Trade will be the previous official closing price.

<sup>36</sup> For example, when the Protected NBBO is crossed, the Reference Price Range would be equal to the IEX BBO (assuming it was valid). In addition, when the Protected NBBO is one-sided (and therefore the IEX BBO is also necessarily one-sided), the Reference Price Range would be equal to the higher (lower) of the Final Consolidated Last Sale Eligible Trade, or the Protected NBB (NBO).

result in such orders being priced beyond a User's defined limit price, or the Midpoint Price Constraint as set forth in Exchange Rule 11.190(h)(2) and 11.190(h)(3)(D)(i).

For example, if the Protected NBBO is \$10.15 x \$10.09 (crossed), and the IEX BBO is \$10.05 x \$10.10, the Reference Price Range would be equal to the IEX BBO. However, pursuant to current Rule 11.350(a)(2), non-displayed orders to buy resting at their limit price on the Continuous Book between \$10.05 and \$10.09 would be priced to the Protected NBB of \$10.15 for purposes of determining the clearing price, which is more aggressive than their User defined limit prices, as well as the Midpoint Price Constraint of \$10.09 (pursuant to Rule 11.190(h)(3)(D)(i)).

Thus, the Exchange proposes to amend Rule 11.350(a)(2) to clarify that for Opening and Closing Auctions, non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will be priced at the lower (upper) threshold of the Reference Price Range. As a result, when the Reference Price Range does not equal the Protected NBBO (*e.g.*, when the Protected NBBO is crossed), non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will be adjusted to less aggressive prices, consistent with the User defined limit price, if any, as well as the Midpoint Price Constraint.<sup>37</sup>

In addition to the clarification above, the Exchange further identified that Rule 11.350(a)(2) does not explicitly reflect the Exchange's handling of non-displayed orders resting on the Continuous Book within the Reference Price Range in one-sided markets. Specifically, as described above, Rule 11.350(a)(2) states in relevant part that non-displayed buy (sell) orders resting on the Continuous Book within the Reference Price Range will be priced to the Protected NBB (NBO) for the purposes of determining the clearing price. However, when there is no valid Protected NBBO or IEX BBO, and thus the Reference Price Range is a single price (*e.g.*, when the Reference Price Range is equal to the Final Consolidated

<sup>37</sup> Modifying the example above under the proposed Rule, if the Protected NBBO is \$10.15 x \$10.09 (crossed), and the IEX BBO is \$10.05 x \$10.10, the Reference Price Range would be equal to the IEX BBO. Pursuant to proposed Rule 11.350(a)(2), non-displayed orders to buy resting at their limit price on the Continuous Book between \$10.05 and \$10.09 would be priced to the IEX best bid of \$10.05 for purposes of determining the clearing price, which is consistent with User defined limit prices, as well as the Midpoint Price Constraint of \$10.09 (pursuant to Rule 11.190(h)(3)(D)(i)).

<sup>30</sup> Note, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price and the Indicative Clearing Price disseminated in IEX Auction Information as set forth in Rule 11.350(a)(9)(E).

<sup>31</sup> See Securities Exchange Act Release No. 80583 (May 3, 2017), 82 FR 21634 (May 9, 2017). See also *supra* note 12.

<sup>32</sup> See Rule 11.350(a)(9)(A).

<sup>33</sup> See Rule 11.350(a)(26).

Last Sale Eligible Trade), the Exchange's rules do not explicitly identify that non-displayed buy (sell) orders on the Continuous Book resting with a price above (below) the Reference Price Range will be priced equal to the Reference Price Range for purposes of determining the clearing price.

As discussed above, the treatment of non-displayed interest on the Continuous Book resting within the Reference Price Range is generally designed to protect the anonymity of resting non-displayed interest on the Continuous Book during the dissemination of IEX Auction Information. Accordingly, the Exchange's proposed handling of non-displayed interest on the Continuous Book when the Reference Price Range is a single price (*i.e.*, when in a one-sided market the Reference Price Range is equal to either the Final Consolidated Last Sale Eligible Trade, Protected NBB, Protected NBO, IEX best bid, or IEX best offer) is designed with the same goal of avoiding unnecessary information leakage.

For example, if the Final Consolidated Last Sale Eligible Trade is \$10.20, the Protected NBBO is \$10.15 x \$10.09 (crossed), and the IEX BBO is \$10.05 x \$10.50 (beyond the Maximum Percentage), both the Protected NBBO and IEX BBO would be invalid. Thus, pursuant to Rule 11.350(a)(30), the Reference Price Range would be equal to the Final Consolidated Last Sale Eligible Trade of \$10.20, which is higher than the IEX best bid, (\$10.05) and lower than the IEX best offer (\$10.50).<sup>38</sup> Assuming IEX has non-displayed sell orders resting at a price more aggressive than the Reference Price Range between \$10.15 and \$10.19, such orders would be priced to \$10.20 for purposes of determining the clearing price. Pricing such sell orders more passively to \$10.20 for purposes of determining the clearing price would prevent such interest from pushing the Indicative Clearing Price<sup>39</sup> lower than the Reference Price, while the Auction Book Clearing Price<sup>40</sup> remains above the Reference Price. Ordinarily, one would expect the Reference Price to be more aggressive than both the Indicative Clearing Price and the Auction Book Clearing Price. However, in this example, because the Indicative Clearing Price is more aggressive than

both the Reference Price and the Auction Book Clearing Price, IEX Auction Information would have signaled the presence, size, and side of the non-displayed orders resting on the Continuous Book between \$10.15 and \$10.19. However, because current Rule 11.350(a)(2) only addresses orders resting *within* the Reference Price Range, and the Reference Price Range in the example above is a single price, Rule 11.350(a)(2) does not specify how non-displayed buy (sell) orders on the Continuous Book resting with a price above (below) the Reference Price Range will be priced. Accordingly, the Exchange proposes to clarify that such order will be priced equal to the Reference Price Range for the purpose of determining the clearing price.

Furthermore, the Exchange is proposing to make a change to the language in Rule 11.350(a)(30)(C) in order to more clearly describe the method of calculating the Reference Price Range when both the Protected NBBO and IEX BBO are not valid. The fundamental purpose of existing Rule 11.350(a)(30)(C) is to constrain the Reference Price Range to prices that reflect the broader market for the security. With regard to the pricing of non-displayed buy (sell) orders resting on the Continuous Book, the upper (lower) threshold of the Reference Price Range is utilized as a passive benchmark to which such buy (sell) orders will be effectively pegged for purposes of determining the clearing price, in order to avoid information leakage as discussed above. Thus, as described above, the Reference Price Range is generally the Protected NBBO, or alternatively the IEX BBO, when such prices are valid. However, in the event both the Protected NBBO and IEX BBO are not valid, the Exchange determines what price—between the Final Consolidated Last Sale Eligible Trade, and the available Protected NBB and/or NBO, or IEX best bid and/or offer—best reflects the market for the security.

Current Rule 11.350(a)(30), however, pre-supposes that when evaluating subsection (C), the market is necessarily one-sided, and thus does not account for when the market is two-sided (*i.e.*, when there is both a Protected NBB and Protected NBO, and/or both an IEX best bid and best offer, neither of which are valid). Accordingly, the Exchange is proposing to amend Rule 11.350(a)(30)(C) to more clearly describe the method of determining the Reference Price Range when neither the Protected NBBO nor IEX BBO are valid and the market is one-sided. Additionally, the Exchange proposes to re-letter current sub-paragraph (D) of

Rule 11.350(a)(30) as new sub-paragraph (E), and insert a new sub-paragraph (D) to clearly describe the method of determining the Reference Price Range when neither the Protected NBBO nor IEX BBO are valid and the market is two-sided.

Specifically, proposed Rule 11.350(a)(30)(C) clarifies that if there is neither a Valid Protected NBBO nor a Valid IEX BBO, and the market is one-sided, the Reference Price Range is equal to the price of the Final Consolidated Last Sale Eligible Trade, unless such price is:

- Lower than the Protected NBB, in which case the Reference Price Range shall be the price of the Protected NBB; or
- Higher than the Protected NBO, in which case the Reference Price Range shall be equal to the price of the Protected NBO.

Moreover, proposed Rule 11.350(a)(30)(D) clarifies that if there is neither a Valid Protected NBBO nor a Valid IEX BBO and the market is two-sided, the Reference Price Range is equal to the price of the Final Consolidated Last Sale Eligible Trade, unless:

- The Protected NBBO is not crossed and the price of the Final Consolidated Last Sale Eligible Trade is either:
  - Lower than the Protected NBB, in which case the Reference Price Range shall be equal to the price of the Protected NBB; or
  - Higher than the Protected NBO, in which case the Reference Price Range shall be equal to the price of the Protected NBO.
- The Protected NBBO is crossed and the price of the Final Consolidated Last Sale Eligible Trade is either:
  - Lower than the IEX best bid, in which case the Reference Price Range shall be equal to the price of the IEX best bid; or
  - Higher than the IEX best offer, in which case the Reference Price Range shall be equal to the price of the IEX best offer.

The Exchange believes the proposed modifications to Rule 11.350(a)(30) are designed to avoid any potential confusion regarding the Exchange's determination of the Reference Price Range, and therefore further clarifies the Exchange's handling of non-displayed interest resting on the Continuous Book within the Reference Price Range pursuant to Rule 11.350(a)(2).

Lastly, as announced in IEX Trading Alerts #2017-015 and #2017-046, the Exchange intends to become a primary listing exchange and support its first

<sup>38</sup> Note, the Exchange evaluates the Final Last Sale Eligible Trade against the IEX BBO (even though it is beyond the Maximum Percentage) because the Protected NBBO is crossed, and therefore does not accurately reflect the market for the security.

<sup>39</sup> See Rule 11.350(a)(9)(E).

<sup>40</sup> See Rule 11.350(a)(9)(F).

IEX-listed security in 2018.<sup>41</sup> In addition, as part of the listings initiative, the Exchange is providing a series of industry wide weekend tests for the Exchange and its Members to exercise the various technology changes required to support IEX Auctions and listings functionality.<sup>42</sup> Accordingly, the Exchange is proposing to clarify its handling of non-displayed orders resting on the Continuous Book within the Reference Price Range in advance of the industry wide testing period in order to avoid potential confusion, and allow Members and other market participants time to develop, test, and deploy any necessary changes to support such handling.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>43</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>44</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange believes that the proposed rule changes regarding the handling of non-displayed orders resting on the Continuous Book within the Reference Price Range, as well as non-displayed buy (sell) orders on the Continuous Book resting with a price above (below) the Reference Price Range in one-sided markets, are consistent with the protection of investors and the public interest in that they do not substantially alter the substantive functionality governing the pricing of such orders for the Opening and Closing Auction. Specifically, as discussed

above, the proposed rules are designed to achieve the Exchange's existing objective of preserving the anonymity of non-displayed orders resting on the Continuous Book, and resolve an inconsistency between the handling of such orders and the Exchanges existing rules regarding pricing constraints (*i.e.*, any User defined limit price, and the Midpoint Price Constraint).

Furthermore, the Exchange believes the proposed rule changes are consistent with the protection of investors and the public interest in that they are designed to avoid any potential confusion regarding the Exchange's handling of orders for Opening and Closing Auctions as IEX continues industry-wide testing to exercise the technology changes being made by the Exchange and its Members to support IEX as a primary listing exchange. Additionally, the Exchange believes the proposed change to rule 11.350(a)(30)(C) to more clearly describe the method of calculating the Reference Price Range is consistent with the Act and the protection of investors and the public interest, because as described above, it is designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality. Furthermore, the Exchange believes that by enhancing the clarity regarding the method of deriving the Reference Price Range, the proposed rule change compliments the rule changes regarding the pricing of non-displayed orders resting on the Continuous Book within the Reference Price Range.

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

IEX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed correction does not impact inter-market competition in any respect since it is designed to achieve the Exchange's existing design objective of preserving the anonymity of non-displayed orders resting on the Continuous Book, and resolve an inconsistency between the handling of such orders and the Exchanges [*sic*] existing rules regarding pricing constraints (*i.e.*, any User defined limit price, and the Midpoint Price Constraint), without substantially altering the substantive functionality governing the pricing of such orders for the Opening and Closing Auction. Thus, the Exchange believes there are no new inter-market competitive burdens

imposed as a result of the proposed rule changes.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition. Specifically, as discussed above, the proposed rule changes do not substantively alter the functionality governing the Opening and Closing Auctions, and instead are designed to achieve the Exchange's existing design objective of preserving the anonymity of non-displayed orders resting on the Continuous Book, and resolve an inconsistency between the handling of such orders and the Exchanges [*sic*] existing rules regarding pricing constraints (*i.e.*, any User defined limit price, and the Midpoint Price Constraint). Furthermore, the Exchange believes the proposed rule changes are designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the benefit of all market participants. Lastly, the Exchange notes that the proposed changes will apply to all Members on a fair and equal basis. Accordingly, the Exchange believes there are no new intra-market competitive burdens imposed as a result of the proposed rule changes.

### *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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>45</sup> and Rule 19b-4(f)(6) thereunder.<sup>46</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>47</sup>

<sup>45</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>46</sup> 17 CFR 240.19b-4(f)(6).

<sup>47</sup> In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>41</sup> See IEX Trading Alert #2017-015 (Listings Specifications, Testing Opportunities, and Timelines), May 31, 2017. See also IEX Trading Alert #2017-046 (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017.

<sup>42</sup> See, e.g., IEX Trading Alert #2017-028 (First Listings Functionality Industry Test on Saturday, August 26), August 17, 2017; IEX Trading Alert #2017-037 (Second Listings Functionality Industry Test on Saturday, September 9), September 7, 2017; IEX Trading Alert #2017-039 (Third Listings Functionality Industry Test on Saturday, September 23), September 18, 2017; IEX Trading Alert #2017-040 (Rescheduled 4th Listing Functionality Industry Test), September 29, 2017; IEX Trading Alert #2017-046 (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017; and IEX Trading Alert #2017-047 (Fourth Listings Functionality Industry Test on Saturday, November 4), October 31, 2017.

<sup>43</sup> 15 U.S.C. 78f.

<sup>44</sup> 15 U.S.C. 78f(b)(5).

A proposed rule change filed under Rule 19b-4(f)(6)<sup>48</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>49</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, IEX has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, IEX states that the proposed changes do not substantially alter the functionality governing the pricing of non-displayed orders in the Opening and Closing Auctions and are designed to achieve IEX's objective of preserving the anonymity of non-displayed orders resting on the Continuous Book. In addition, IEX notes that the proposed changes also resolve an inconsistency between the handling of non-displayed orders and the Exchange's existing pricing constraints. IEX states that the waiver of the operative delay will allow IEX to implement the proposed changes while the Exchange continues industry-wide testing of the technology changes that IEX and its Members are making to support the Exchange as a listings market. IEX notes that the proposed clarifications regarding the handling of non-displayed orders will provide Members and other market participants with time to develop, test, and deploy any changes necessary to support the handling of non-displayed orders. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes to the operation of the Opening and Closing Auctions, and in particular the treatment of non-displayed orders resting on the Continuous Book in a manner that preserves the anonymity of those orders, are consistent with the Commission's prior approval of IEX's auctions rules and do not raise new or novel regulatory issues.<sup>50</sup> In addition, waiver of the operative delay will provide IEX and its Members with time to incorporate the revised functionality into their testing as they continue to prepare for IEX's functioning as a listings market, which, among other things, will require IEX to conduct Opening and Closing Auctions of IEX-listed securities. Therefore, the Commission designates the proposed rule change operative upon filing.<sup>51</sup>

<sup>48</sup> 17 CFR 240.19b-4(f)(6).

<sup>49</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>50</sup> See *supra* note 12.

<sup>51</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed

At any time within 60 days of the filing of such 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>52</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2018-03 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-2018-03. This file number should be included on 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 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 such

rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>52</sup> 15 U.S.C. 78s(b)(2)(B).

filing also will be available for inspection and copying at the principal office 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-2018-03, and should be submitted on or before March 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-04559 Filed 3-6-18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82798; File No. SR-ICC-2018-003]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Operational Risk Management Framework

March 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 23, 2018, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to update ICC's Operational Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules.

<sup>53</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.