

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-FINRA-2024-005 and should be submitted on or before May 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99989; File No. SR-IEX-2024-06]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Transaction Fees for Tape B Securities

April 18, 2024.

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 April 8, 2024, 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 amend the Exchange's fee schedule applicable to Members⁶ (the "Fee Schedule") pursuant to IEX Rule 15.110(a) and (c). Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁷ and will be operative on May 1, 2024.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to modify the transaction fees applicable to most⁸ displayed executions of Tape B securities.⁹ As proposed, the Exchange will increase the rebate paid for executions of displayed liquidity adding

orders in Tape B securities with an execution price of \$1.00 per share or more from \$0.0004 to \$0.0014 per share, increase the fee for executions of most¹⁰ displayed liquidity removing orders in Tape B securities from \$0.0010 to \$0.0020 per share (unless a lower fee applies), and introduce two new fee codes to reflect these fee changes. IEX is not proposing any changes to executions that add or remove non-displayed liquidity in Tape B securities, which will continue to be subject to the same fees charged for executions in Tape A and C securities.¹¹ The Exchange notes that other exchanges also offer different fees for Tape B executions that are designed to incentivize the posting of displayed liquidity in Tape B securities.¹² IEX's proposed fee structure for executions of Tape B securities is less than or in line with other exchanges, but with lower access fees and rebates and without the use of any volume-based pricing.¹³

IEX is making this proposal to incentivize the posting of displayed liquidity in Tape B securities by increasing the rebate applied to those orders, thereby promoting price discovery and market quality on the Exchange, which the Exchange believes benefits all Members and market participants. The Exchange periodically assesses its fee structure. Based upon a recent assessment, the Exchange believes that the proposed pricing change would further incentivize Members to submit displayed orders in Tape B securities priced at or above \$1.00 per share.

¹⁰ See *supra* note 5.

¹¹ As discussed below, IEX is proposing to introduce a new fee code that will apply to non-displayed adding or removing executions of Tape B securities, but the fees charged for these executions will be unchanged.

¹² See, e.g., MEMX Equities Fee Schedule (effective April 1, 2024), available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/> (paying an "additive rebate" of \$0.0002 per share for Tape B securities if the member satisfies a volume threshold in its Tape B trades, but offering no similar rebate for Tape A or C securities); Nasdaq Equity 7, Section 118(a)(1), available at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_118_nasdaq_market_center_order_execution_and_routing (paying a supplemental rebate of \$0.0001 per share for Tape B displayed liquidity providing orders, but offering no similar rebate for Tape A or C securities).

¹³ See, e.g., MEMX Equities Fee Schedule, *supra*, note 9 (offering rebates for adding displayed Tape B liquidity of \$0.0015 to \$0.0035, depending upon trading volume, and charging as much as \$0.0030 to remove Tape B liquidity); Nasdaq Equity 7, Section 118(a)(1), *supra*, note 9 (offering rebates for adding displayed Tape B liquidity of \$0.0028 to \$0.0036, depending upon trading volume, and charging as much as \$0.0030 to remove Tape B liquidity).

⁹ 17 CFR 200.30-3(a)(12).

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 See IEX Rule 1.160(s).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ This fee proposal will not change the fees charged or fee codes applied for Retail and Retail Liquidity Providing executions of Tape B securities, which execute for free. Additionally, while the fee proposal includes a fee code change for all other executions of Tape B securities that are priced at less than \$1.00 per share, the fees charged for such executions will not change. Finally, as described *infra*, certain pegged order types that by design are not likely to interact with displayed liquidity will not be subject to the increased fees charged for taking displayed liquidity in Tape B securities.

⁹ "Tape B securities" are securities listed on any national securities exchange other than the New York Stock Exchange or The Nasdaq Stock Market.

Fee Schedule Changes

IEX proposes to increase the rebate it pays for adding displayed liquidity in Tape B securities from \$0.0004 per share to \$0.0014 per share for executions priced at or above \$1.00 per share. “Sub-dollar”¹⁴ executions of Tape B securities that add displayed liquidity will continue to execute for free. Consistent with the higher rebate IEX will pay for adding displayed liquidity in Tape B securities, IEX proposes to increase the fee for removing displayed liquidity in Tape B securities from \$0.0010 per share to \$0.0020 per share. Sub-dollar executions of Tape B securities that remove displayed liquidity will continue to be charged 0.09% of the Total Dollar Value (“TDV”) of the execution.

IEX does not propose to change the fee (\$0.0010 per share) currently applicable to Discretionary Peg (“D-Peg”),¹⁵ Fixed Midpoint Peg (“FM-Peg”),¹⁶ Midpoint Peg (“M-Peg”),¹⁷ or Primary Peg (“P-Peg”)¹⁸ orders that remove displayed liquidity in Tape B securities. IEX notes that each of these four order types is designed to execute within the spread (*i.e.*, at a price between the NBBO¹⁹). IEX understands that Members and other market participants typically use these order types with the expectation that they will either add or remove non-displayed liquidity, and that they will not execute against displayed liquidity. However, these four order types may execute against displayed orders in certain “edge case” scenarios, such as when a resting D-Peg order is invited to Recheck the Order Book²⁰ and matches with a displayed odd lot order, or when an incoming M-Peg order matches with a

displayed order standing its ground in a locked or crossed market. Currently, in these circumstances, the non-displayed pegged order is charged the same fee (*i.e.*, \$0.0010 per share) as if it traded with a non-displayed order (Fee Code Combination TL). To provide greater fee determinism to its Members and consistent with current practice, IEX proposes to continue charging \$0.0010 per share for D-Peg, FM-Peg, M-Peg, and P-Peg orders that remove displayed liquidity in a Tape B security in one of the above-listed circumstances.

Notwithstanding this exception, if an incoming Post Only²¹ order for a Tape B security executes against a resting M-Peg or FM-Peg order with the Trade Now²² instruction, IEX proposes to charge the M-Peg or FM-Peg order a fee of \$0.0020 per share, not the \$0.0010 per share fee that would otherwise apply had the M-Peg or FM-Peg order executed against a displayed order for a Tape B security. IEX is proposing to make this distinction because Members that include a Trade Now instruction on their M-Peg or FM-Peg orders have thereby specified their willingness to match with incoming Post Only orders, and thus indicated their willingness to pay the \$0.0020 per share fee IEX will charge for taking displayed liquidity in Tape B securities.

IEX is not proposing to change the fees charged or fee codes applied to Retail²³ or Retail Liquidity Provider²⁴ orders that execute in Tape B securities. Thus, a Retail order that takes liquidity from a non-displayed order in a Tape B security will be assigned Fee Code Combination TIR (free execution), and the non-displayed order will be assigned Fee Code Combination MIB (fee of \$0.0010 per share). Relatedly, a Retail order that takes liquidity from a

displayed odd lot order in a Tape B security will be assigned Fee Code Combination TLR (free execution), and the displayed odd lot order will be assigned Fee Code Combination MLB (rebate of \$0.0014 per share).

IEX also proposes to introduce two new Fee Code Modifiers: “B” and “K” to reflect the proposed fee changes. Fee Code Modifier B would be included on any execution report for an execution of a Tape B security, with the exception of executions of Retail and Retail Liquidity Provider orders, which will continue to execute for free, as described above. In addition, Fee Code Modifier K would be included on execution reports for D-Peg, FM-Peg, M-Peg, or P-Peg orders that remove displayed liquidity in a Tape B security in the circumstances discussed above.

IEX also proposes to add two new footnotes to the Fee Schedule: (i) proposed Footnote 2, which would apply to Fee Code Modifier B, and (ii) proposed Footnote 3, which would apply to Fee Code Combination TLBK. Proposed Footnote 2 reads in full:

Fee Code B: Fee Code B applies to all executions of Tape B securities, other than executions of Retail and Retail Liquidity Provider orders and executions with Base Fee Codes X, O, C, H, and P.²⁵

And Proposed Footnote 3 reads in full:

TLBK will not apply to Midpoint Peg and Fixed Midpoint Peg orders with Trade Now functionality enabled that take liquidity from an incoming Post Only order for a Tape B security; such executions will be assigned Fee Code Combination TLWB.

IEX proposes to add these Fee Codes to the Fee Code Modifiers table on the IEX Fee Schedule as follows (internal footnotes omitted):

Additional fee codes	Description	Fee
B K	Tape B security Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity (Tape B).	See Relevant Fee Code Combinations Below. See Relevant Fee Code Combinations Below.

Additionally, IEX proposes to add nine new Fee Code Combinations to the Additional Fee Code Combinations and

Associated Fees table that reflect the fees IEX proposes to assess for

executions involving a Tape B security:²⁶

¹⁴ “Sub-dollar” refers to orders or executions priced at less than \$1.00 per share.

¹⁵ See IEX Rule 11.190(b)(10).

¹⁶ See IEX Rule 11.190(b)(19).

¹⁷ See IEX Rule 11.190(b)(9).

¹⁸ See IEX Rule 11.190(b)(8).

¹⁹ See IEX Rule 1.160(u).

²⁰ See IEX Rule 11.230(a)(4)(D).

²¹ See IEX Rule 11.190(b)(20).

²² When an incoming Post Only order matches a resting order with a Trade Now instruction, the

resting order converts into an executable order that removes liquidity against the incoming Post Only order, and the incoming Post Only order becomes the liquidity adding order. See IEX Rule 11.190(b)(21). A Trade Now instruction cannot be added to a D-Peg or P-Peg order. See IEX Rules 11.190(b)(8) and 11.190(b)(10).

²³ See IEX Rule 11.190(b)(15).

²⁴ See IEX Rule 11.190(b)(14). Retail Liquidity Provider orders can only match with Retail orders and will always be assigned Fee Code Combination

MIA (free execution), irrespective of if the execution is a Tape B security.

²⁵ Fee Code X applies to securities that trade in the Opening Cross. Fee Codes O, C, H, and P are the Auction Match fee codes. As reflected in proposed footnote 2, these fee codes will continue to apply to Tape B securities.

²⁶ As described above, all nine of the following Fee Code Combinations will be modified by proposed footnote 2.

- Fee Code Combination MIB would apply to an order that adds non-displayed liquidity in a Tape B security. These executions will be charged a fee of \$0.0010 per share for executions at or above \$1.00 and 0.10% of the TDV for sub-dollar executions.

- Fee Code Combination MLB would apply to an order that adds displayed liquidity in a Tape B security. These executions will be paid a rebate of \$0.0014 per share for executions at or above \$1.00 and execute for free for sub-dollar executions.

- Fee Code Combination MLYB would apply to a Post Only order that executes on entry with a contra-side order with the Trade Now instruction in a Tape B security. These executions will be paid a rebate of \$0.0014 per share. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,²⁷ IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table column read “N/A”.²⁸

- Fee Code Combination TIB would apply to an order that removes non-displayed liquidity in a Tape B security. These executions will be charged a fee of \$0.0010 per share for executions at or above \$1.00 and 0.10% of TDV for sub-dollar executions.

- Fee Code Combination TIYB would apply to a Post Only order priced at \$1.00 or more that removes non-displayed liquidity in a Tape B security on entry. These executions will be charged a fee of \$0.0010 per share for executions at or above \$1.00. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,²⁹ IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table read “N/A”.³⁰

- Fee Code Combination TLB would apply to an order that removes displayed liquidity in a Tape B security. These executions will be charged a fee

of \$0.0020 per share for executions at or above \$1.00 and 0.09% of TDV for sub-dollar executions.

- Fee Code Combination TLBK would apply to a D-Peg, FM-Peg, M-Peg, or P-Peg order that removes displayed liquidity in a Tape B security. These executions will be charged a fee of \$0.0010 per share for executions at or above \$1.00 and 0.09% of TDV for sub-dollar executions. As described above, Fee Code Combination TLBK will be modified by proposed footnote 2, which explains that M-Peg and FM-Peg orders with a Trade Now instruction that execute against an incoming Post Only order will be assigned Fee Code Combination TLWB, and will not be assigned Fee Code Combination TLBK.

- Fee Code Combination TLYB would apply to a Post Only order priced at \$1.00 or more that removes displayed liquidity on entry in a Tape B security. These executions will be charged a fee of \$0.0020 per share. Because the Exchange will disregard the Post Only instruction on sub-dollar orders,³¹ IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table read “N/A”.³²

- Fee Code Combination TLWB would apply to a resting non-displayed order with the Trade Now instruction that executes against an incoming Post Only order priced at \$1.00 or more per share. These executions will be charged a fee of \$0.0020 per share. Because the Exchange will disregard the Post Only instruction on an incoming sub-dollar orders,³³ that order will not trigger a resting order with the “Trade Now” instruction to become the taking order. Therefore, Fee Code Combination TLWB would never apply to a resting non-displayed order that matches with an incoming sub-dollar order with a Post Only instruction, and IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table column read “N/A”.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)³⁴ of the Act in general and furthers the objectives of Sections 6(b)(4)³⁵ of the Act, in particular, in that

³¹ See *supra* note 24.

³² An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting displayed order will result in a Fee Code Combination of TLB (“Removes displayed liquidity (Tape B)”) on the execution report and be charged the normal sub-dollar lit taking fee of 0.09% of the TDV.

³³ See *supra* note 24.

³⁴ 15 U.S.C. 78f.

³⁵ 15 U.S.C. 78f(b)(4).

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 believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory.

IEX has concluded that, in the context of current regulatory requirements governing access fees and rebates, it is not able to sufficiently compete with other exchanges for order flow in Tape B securities without offering higher rebate incentives. Based on informal discussions with market participants, IEX believes that Members and other market participants may be more willing to send displayed orders in Tape B securities to IEX if the proposed fee structure was adopted.

Accordingly, IEX has designed the proposed access fee and rebate to attract and incentivize displayed orders in Tape B securities as well as order flow seeking to trade with such displayed orders. Moreover, increases in displayed liquidity of Tape B securities would contribute to the public price discovery process which would benefit all market participants and protect investors and the public interest.

As it has stated repeatedly, IEX believes that the existing access fee level of \$0.0030 per share set by Rule 610 of Regulation NMS³⁶ heavily affects the way that exchanges compete for order flow and has led to various market distortions and inefficiencies. It has also created a collective action problem that substantially hinders the ability of exchanges to compete by offering better execution quality and without relying on high access fees and correspondingly high rebates. The Commission can resolve this problem and help to promote more displayed liquidity by adjusting the access fee cap to \$0.0010 per share, a level consistent with other market-based trading cost measures and one favored by a broad spectrum of market participants and virtually all institutional investors that have commented on this issue.³⁷ IEX hopes to be able to further adjust its transaction prices in the near future to reflect a market-wide adoption of lower access fees as a result of this critically-needed reform.

³⁶ 17 CFR 242.610

³⁷ See IEX comment letters on S7-30-22, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better-Priced Orders: <https://www.sec.gov/comments/s7-30-22/s73022-20160364-328968.pdf>; <https://www.sec.gov/comments/s7-30-22/s73022-276579-672162.pdf>; <https://www.sec.gov/comments/s7-30-22/s73022-434239-1076742.pdf>.

²⁷ See IEX Rule 11.190(b)(20)(A).

²⁸ An incoming sub-dollar order for a Tape B security with a disregarded Post Only instruction will not trigger a resting order with the “Trade Now” instruction to become the taking order and will not be treated as the displayed liquidity adding order. Thus, Fee Code Combination MLYB would never apply. If the incoming order matched with a resting non-displayed or displayed order, it will result in a Fee Code Combination of TLB or TIB, with fees of 0.09% or 0.10% of TDV, respectively.

²⁹ See *supra* note 24.

³⁰ An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting non-displayed order will result in a Fee Code Combination of TIB (“Removes non-displayed liquidity (Tape B)”) on the execution report and be charged the normal sub-dollar dark taking fee of 0.10% of the Total Dollar Value (“TDV”).

Accordingly, IEX has designed this proposed rebate to attract and incentivize displayed order flow in Tape B securities as well as order flow seeking to trade with displayed order flow in Tape B securities. Moreover, increases in displayed liquidity of Tape B securities would contribute to the public price discovery process which would benefit all market participants and protect investors and the public interest.

The Exchange believes that the proposed fee structure for providing and removing displayed liquidity in Tape B securities is reasonable and consistent with the Act. Specifically, the Exchange believes that for securities that trade at or above \$1.00 per share, it is reasonable to provide an increased rebate of \$0.0014 per share for providing displayed liquidity in Tape B securities and to increase the fee for removing displayed liquidity in Tape B securities from \$0.0010 per share to \$0.0020 per share, which is designed to keep IEX's displayed trading prices for Tape B securities competitive with those of other exchanges.³⁸ In this regard, IEX notes that while many competing exchanges pay rebates to provide displayed liquidity in Tape B securities that are substantially higher than those proposed, others charge fees to provide displayed liquidity for Tape B securities that trade at or above \$1.00 per share.³⁹ Further, IEX notes that for securities that trade at or above \$1.00 per share, many competing exchanges charge substantially higher fees to remove displayed liquidity than those charged by IEX.⁴⁰ And, as discussed in the

³⁸ As discussed in the Purpose section, IEX's proposed rebate of \$0.0014 per share for displayed liquidity adding orders in Tape B securities priced at \$1.00 or more is below the rebate ranges of \$0.0015 to \$0.0035 per share and \$0.0028 to \$0.0036 per share paid by MEMX and Nasdaq, respectively, for displayed liquidity adding orders. And IEX's proposed fee of \$0.0020 for removing displayed liquidity in Tape B securities priced at \$1.00 or more is also below the \$0.0030 per share fee charged by both MEMX and Nasdaq for displayed liquidity removing orders. See *supra* note 10.

³⁹ See e.g., Nasdaq BX Equity 7 Section 118(a) (\$0.0020 fee per share to add displayed liquidity in Tape B securities priced at or above \$1.00 per share), available at <https://listingcenter.nasdaq.com/rulebook/bx/rules/BX%20Equity%207>; Cboe BYX Equities Fee Schedule (\$0.0020 fee per share to add displayed liquidity in Tape B securities priced at or above \$1.00 per share, available at <https://www.cboe.com/us/equities/membership/fee-schedule/byx/>; Cboe EDGA Equities Fee Schedule (\$0.0030 fee per share to add displayed liquidity in Tape B securities priced at or above \$1.00 per share, available at <https://www.cboe.com/us/equities/membership/fee-schedule/edga/>).

⁴⁰ See e.g., Cboe BZX Equities Fee Schedule (\$0.0030 fee per share to remove displayed liquidity in Tape B securities priced at or above \$1.00 per share), available at <https://markets.cboe.com/us/equities/membership/fee-schedule/bzx/>; MIA

Purpose section, other exchanges also offer specific fee incentives for Tape B securities.⁴¹ Consequently, IEX believes that the proposed fee structure for providing and removing displayed liquidity in Tape B securities is within the range charged by competing exchanges and does not raise any new or novel issues not already considered by the Commission in the context of other exchanges' fees.

Further, IEX believes that it is reasonable and consistent with the Act not to modify the fees charged to D-Peg, FM-Peg, M-Peg, and P-Peg orders that remove displayed liquidity (except for M-Peg and FM-Peg orders with a Trade Now instruction that remove displayed liquidity from an incoming Post Only order), even if it is in a Tape B security. As discussed in the Purpose section, these four order types are designed to interact with non-displayed liquidity, but in unexpected circumstances can trade with displayed liquidity. IEX understands that, in general, Members seek fee determinism, *i.e.*, the ability to know in advance the transaction fees that will apply to particular orders at the time they send the orders, and a lack thereof could operate to disincentive order flow. Consequently, IEX believes it is fair and equitable to continue charging \$0.0010 per share for displayed liquidity removing executions of these four order types to avoid this impact. Further, IEX notes that any Member can submit a D-Peg, FM-Peg, M-Peg, or P-Peg order, and therefore this fee will apply equally to all Members.

However, if an incoming Post Only⁴² order for a Tape B security executes against a resting M-Peg or FM-Peg order with the Trade Now⁴³ instruction, IEX

Pearl Equities Exchange Fee Schedule (\$0.00295 fee per share to remove displayed liquidity in in Tape B securities priced at or above \$1.00 per share), available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAX_Pearl_Equities_Fee_Schedule_04012024.pdf; MEMX Fee Schedule (\$0.0030 fee per share to remove displayed liquidity in in Tape B securities priced at or above \$1.00 per share), available at <https://info.memxtrading.com/fee-schedule/>; Nasdaq Equity 7 Section 118(a) (up to \$0.0030 fee per share to remove displayed liquidity in in Tape B securities priced at or above \$1.00 per share), available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-equity-7>; New York Stock Exchange Price List 2024 (\$0.00275 fee per share to remove displayed liquidity in in Tape B securities priced at or above \$1.00 per share), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

⁴¹ See *supra* note 9.

⁴² See IEX Rule 11.190(b)(20).

⁴³ When an incoming Post Only order matches a resting order with a Trade Now instruction, the resting order converts into an executable order that removes liquidity against the incoming Post Only order, and the incoming Post Only order becomes the liquidity adding order. See IEX Rule 11.190(b)(21).

proposes to charge the M-Peg or FM-Peg order a fee of \$0.0020 per share, not the \$0.0010 per share fee that would otherwise apply had the M-Peg or FM-Peg order executed against a displayed order for a Tape B security, as described in the preceding paragraph. IEX is proposing to make this distinction because the Member who included a Trade Now instruction on its M-Peg or FM-Peg order specified its willingness to match with incoming Post Only orders, and thus indicated its willingness to pay the \$0.0020 per share fee IEX will charge for taking displayed liquidity in Tape B securities.

Correspondingly, IEX believes that it is reasonable and consistent with the Act to modify the fees charged to M-Peg and FM-Peg orders with a Trade Now instruction that remove displayed liquidity from an incoming Post Only order in a Tape B security. As discussed in the Purpose section, the Member who included a Trade Now instruction on its M-Peg or FM-Peg order specified its willingness to match with incoming Post Only orders, and thus indicated its willingness to pay the \$0.0020 per share fee IEX will charge for taking displayed liquidity in Tape B securities.

The Exchange also believes that it is reasonable and consistent with the Act not to modify its displayed fees for sub-dollar executions to synchronize those fees with the proposed fees for executions at or above \$1.00 per share. The Exchange believes that the existing fee structure for such executions continues to be reasonably designed to incentivize displayed order flow (and orders seeking to trade with displayed order flow) in such securities.

Further, IEX believes that it is reasonable and consistent with the Act not to change the fees applicable to the execution of Retail orders that remove liquidity, which will continue to execute for free. In this regard, the Exchange believes that the existing fee structure continues to be reasonably designed to incentivize the entry of Retail orders and Retail Liquidity Provider orders, and notes that the Commission, in approving IEX's Retail Price Improvement Program, acknowledged the value of exchanges' offering incentives to attract both retail investor orders and orders specifically designated to execute only with retail orders.⁴⁴

The Exchange further believes that the proposed fee change is consistent with the Act's requirement that the Exchange provide for an equitable allocation of

⁴⁴ See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR-IEX-2019-05).

fees that is also not unfairly discriminatory.

First, the fees for adding and removing displayed liquidity in Tape B securities will apply on a per share basis in an equal and nondiscriminatory manner to all Members, without regard to the volume of orders submitted by a Member or other factors.

Second, because the fees would apply on a flat, per share basis—like IEX's existing fees—they will continue to be fully deterministic, in that a Member will be able to determine the Exchange fees for each execution in a Tape B security. IEX believes this aspect of its fee proposal will assist all Members in making decisions about routing of orders without the uncertainties associated with volume tiers or other requirements that cannot be determined at the time of the trade. IEX notes that applying fees in this way is consistent with the purpose of the Commission's proposal to require that exchange fees be set in a manner such that the amount of a fee or rebate related to each trade is determinable at the time of the trade.⁴⁵

Additionally, the Exchange believes that it is reasonable to add footnote 2 to the Fee Codes section of the Fee Schedule to clarify that only Fee Code Combinations that include new Fee Code B are for executions of Tape B securities. Adding this footnote will avoid any potential confusion as to the applicable fees and rebates for each execution.

Finally, to the extent the proposed change is successful in incentivizing the entry and execution of displayed orders on IEX, such greater liquidity will benefit all market participants by increasing price discovery and price formation (on IEX and market-wide) as well as market quality and execution opportunities.

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

IEX believes that the proposed rule change will not 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 proposed fee change is designed to enhance IEX's competitiveness with other venues, as described in the Statutory Basis section.

In this context, the Exchange does not believe that the proposed fees would burden competition on competing venues or their participants. Moreover, as noted in the Statutory Basis section, the Exchange believes that the proposed changes do not raise any new or novel issues not already considered by the Commission.

The Exchange believes that the proposed rule change will not 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 match or on the volume of orders submitted by a Member but on the type of order entered or if the security at issue is a Tape B security, and all Members can submit any type of order for any type of security and will be subject to the same fee for that type of order and security. IEX believes that applying a flat, per share fee or rebate for each type of order avoids imposing a burden on competition by ensuring that individual Members do not gain a competitive advantage over other Members based solely on their size or volume of orders they are able to submit to the Exchange. Further, the proposed fee changes are designed to encourage market participants to bring increased order flow to the Exchange, which benefits all market participants.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁴⁶ 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)⁴⁷ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-06 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-2024-06. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2024-06 and should be submitted on or before May 15, 2024.

⁴⁵ See Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266, 80292-93 (December 29, 2022) (File No. S7-30-22).

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁷ 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁸

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99990; File No. SR-IEX-2024-07]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Activation Value in IEX Rule 11.190(g)(2)

April 18, 2024.

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 April 12, 2024, the 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 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 Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 11.190(g)(2) to incrementally optimize the effectiveness of the proprietary mathematical calculation used to make quote instability determinations for certain orders, and to correct two cross-reference errors and one typographical error. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

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 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 the proposed rule change is to amend IEX Rule 11.190(g)(2) to incrementally optimize the proprietary mathematical calculation used to make quote instability determinations for certain orders (*i.e.*, to assess the probability of a “crumbling quote”—an imminent change to the current Protected NBB⁷ to a lower price or the current Protected NBO⁸ to a higher price for a particular security). This calculation is referred to as the “crumbling quote indicator” or “CQI”. This proposed rule change would only modify the functionality of CQI 2,⁹ which is the CQI version used to make quote instability determinations for all Discretionary Limit (“D-Limit”)¹⁰ orders, and for Discretionary Peg (“D-Peg”),¹¹ primary peg (“P-Peg”),¹² and Corporate Discretionary Peg (“C-Peg”)¹³ orders for which the User¹⁴ selected CQI 2 (collectively “CQI 2 enhanced pegged orders”).¹⁵

The Exchange also proposes to correct two cross-reference errors and one typographical error in the rule text defining the CQI 2.

⁷ See IEX Rule 1.160(cc).

⁸ See IEX Rule 1.160(cc).

⁹ IEX supports two versions of the CQI—Option 1 Crumbling Quote (which is based on the CQI in effect when IEX began operating as a national securities exchange in 2016) (“CQI 1”) and Option 2 Crumbling Quote (“CQI 2”). See IEX Rule 11.190(g)(1) and (g)(2), respectively. CQI 1 is not affected by this proposed rule change.

¹⁰ See IEX Rule 11.190(b)(7).

¹¹ See Rule 11.190(b)(10).

¹² See Rule 11.190(b)(8).

¹³ See Rule 11.190(b)(16).

¹⁴ See IEX Rule 1.160(qq).

¹⁵ Users may select which CQI version to apply to D-Peg, P-Peg, and C-Peg orders (pegged orders eligible to exercise price discretion to their discretionary price except during periods of quote instability). See IEX Rules 11.190(b)(8)(K), 11.190(b)(10)(K), and 11.190(b)(16)(K).

Background

When CQI 2 generates a quote instability determination (*i.e.*, it is “on” pursuant to IEX Rule 11.190(g)(2)), CQI 2 enhanced pegged orders resting on the Order Book¹⁶ do not exercise price discretion to meet the limit price of an active (*i.e.*, taking) order, and remain pegged to a price that is the less aggressive of one (1) minimum price variant (“MPV”)¹⁷ less aggressive than the primary quote (*i.e.*, one MPV below (above) the NBB¹⁸ (NBO¹⁹) for buy (sell) orders) or the order’s limit price, if any.²⁰

Relatedly, D-Limit orders priced at or more aggressively than the quote instability determination price level (“CQI Price”) are re-priced when CQI 2 is on.²¹ Specifically, if the System²² receives a D-Limit buy (sell) order when CQI 2 is on, and the D-Limit order has a limit price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to a price one (1) MPV lower (higher) than the CQI Price (the “effective limit price”). Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the Order Book, if a quote instability determination is made and such shares are ranked and displayed (in the case of a displayed order) by the System at a price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to a price one MPV lower (higher) than the CQI Price.²³

Once the price of a D-Limit order that has been posted to the Order Book is automatically adjusted by the System to its effective limit price, the order will continue to be ranked and displayed (in the case of a displayed order) at the adjusted price,²⁴ unless subject to another automatic adjustment; if the order is subject to the price sliding provisions of IEX Rule 11.190(h); or if the User elects, pursuant to IEX Rule 11.190(b)(7)(E)(i), that the order will be re-priced if resting at a price that is less aggressive than the NBB (for a buy order) or NBO (for a sell order) ten (10) milliseconds after the most recent quote

¹⁶ See IEX Rule 1.160(p).

¹⁷ See IEX Rule 11.210.

¹⁸ See IEX Rule 1.160(u).

¹⁹ See IEX Rule 1.160(u).

²⁰ C-Peg orders are also constrained by the consolidated last sale price of the security, and therefore cannot trade, book, or exercise discretion at a price that is more aggressive than the consolidated last sale price. See IEX Rule 11.190(b)(16).

²¹ See IEX Rules 11.190(b)(7)(A) and (B).

²² See IEX Rule 1.160(nn).

²³ See IEX Rule 11.190(b)(7)(C) and (D).

²⁴ See IEX Rule 11.190(b)(7)(F).

⁴⁸ 17 CFR 200.30-3(a)(12).

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 17 CFR 240.19b-4(f)(6)(iii).