

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 38

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2024 - \* 09

Amendment No. (req. for Amendments \*)

Filing by Investors' Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change to amend the fee schedule

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Claudia Last Name \* Crowley

Title \* Chief Regulatory Officer

E-mail \* claudia.crowley@iextrading.com

Telephone \* (646) 343-2041 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, Investors' Exchange LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/20/2024

(Title \*)

By Nathaniel Kolodny

Lead Regulation Counsel

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Nathaniel Kolodny

Digitally signed by Nathaniel Kolodny  
Date: 2024.05.20 11:29:00 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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Tape A and C pricing change 19b-4 - S

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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Tape A and C pricing change 19b-4 E

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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Tape A and C pricing change Ex. 5 - S

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder<sup>2</sup>, Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to Members<sup>3</sup> (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<sup>4</sup>, and will be operative on June 1, 2024.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

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

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

<sup>3</sup> See IEX Rule 1.160(s).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Claudia Crowley  
Chief Regulatory Officer  
Investors Exchange LLC  
646-343-2041

Nathaniel Kolodny  
Lead Regulation Counsel  
Investors Exchange LLC  
646-343-2034

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

(a) 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 most<sup>5</sup> displayed executions of Tape A and C securities.<sup>6</sup> As proposed, the Exchange will increase the rebate paid for executions of displayed liquidity adding orders in Tape A and C 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 most<sup>7</sup> displayed liquidity removing orders in Tape A or C securities from \$0.0010 to \$0.0020 per share (unless a lower fee applies), and update the fee codes in the Fee Schedule to reflect these changes. IEX is not proposing any changes to executions that add or remove non-displayed liquidity in Tape A or C securities, which will continue to be subject to the same fees currently charged for such executions in Tape A and C securities. IEX's proposed fee structure for executions of Tape A and C

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<sup>5</sup> This fee proposal will not change the fees charged or fee codes applied for Retail and Retail Liquidity Providing executions of Tape A and C securities, which execute for free. Additionally, while the fee proposal includes a fee code change for all other executions of Tape A and C 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 A and C securities.

<sup>6</sup> "Tape A securities" are securities listed on the New York Stock Exchange, and "Tape C securities" are securities listed on The Nasdaq Stock Market.

<sup>7</sup> See supra note 5.

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.<sup>8</sup>

IEX is making this proposal to incentivize the posting of displayed liquidity in Tape A and C 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 A and C securities priced at or above \$1.00 per share. Further, the Exchange recently instituted identical fee changes for Tape B securities to incentivize the posting of displayed liquidity in Tape B securities.<sup>9</sup> IEX is now proposing to make the same fee changes for orders that add or remove displayed liquidity in Tape A and C securities.

#### Fee Schedule Changes

IEX proposes to increase the rebate it pays for adding displayed liquidity in Tape A and C securities from \$0.0004 per share to \$0.0014 per share for executions priced at or above \$1.00 per share. Consistent with the higher rebate IEX will pay for adding displayed liquidity in Tape A and C securities, IEX proposes to increase the fee for removing displayed liquidity in Tape A and C securities from \$0.0010 per share to

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<sup>8</sup> See, e.g., MEMX Equities Fee Schedule, (effective May 1, 2024), available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/> (offering rebates for adding displayed liquidity of \$0.0015 to \$0.0033, depending upon trading volume, and charging as much as \$0.0030 to remove liquidity); 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](https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_118_nasdaq_market_center_order_execution_and_routing) (offering rebates for adding displayed liquidity of \$0.0018 to \$0.00305, depending upon trading volume, and charging as much as \$0.0030 to remove displayed liquidity).

<sup>9</sup> See Securities Exchange Act Release No. 99989 (April 18, 2024), 89 FR 31231 (April 24, 2024) (SR-IEX-2024-06) (“Tape B Fee Filing”).

\$0.0020 per share.

“Sub-dollar”<sup>10</sup> executions of Tape A and C securities that add displayed liquidity will continue to execute for free. Sub-dollar executions of Tape A and C 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”)<sup>11</sup>, Fixed Midpoint Peg (“FM-Peg”)<sup>12</sup>, Midpoint Peg (“M-Peg”)<sup>13</sup>, or Primary Peg (“P-Peg”)<sup>14</sup> orders that remove displayed liquidity in Tape A or C securities. IEX notes that each of these four order types is designed to execute within the spread (i.e., at a price between the NBBO<sup>15</sup>). 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 Book<sup>16</sup> 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

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<sup>10</sup> “Sub-dollar” refers to orders or executions priced at less than \$1.00 per share.

<sup>11</sup> See IEX Rule 11.190(b)(10).

<sup>12</sup> See IEX Rule 11.190(b)(19).

<sup>13</sup> See IEX Rule 11.190(b)(9).

<sup>14</sup> See IEX Rule 11.190(b)(8).

<sup>15</sup> See IEX Rule 1.160(u).

<sup>16</sup> See IEX Rule 11.230(a)(4)(D).

(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 A or C security in one of the above-listed circumstances.

Notwithstanding this exception, if an incoming Post Only<sup>17</sup> order for a Tape A or C security executes against a resting M-Peg or FM-Peg order with the Trade Now<sup>18</sup> 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 A or C 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 A and C securities.

IEX is not proposing to change the fees charged or fee codes applied to Retail<sup>19</sup> or Retail Liquidity Provider<sup>20</sup> orders that execute in Tape A or C securities. Thus, a Retail order that takes liquidity from a non-displayed order in a Tape A or C security will be assigned Fee Code Combination TIR (free execution), and the non-displayed order

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<sup>17</sup> See IEX Rule 11.190(b)(20).

<sup>18</sup> 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).

<sup>19</sup> See IEX Rule 11.190(b)(15).

<sup>20</sup> 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 A or C security.

will be assigned Fee Code Combination MI (fee of \$0.0010 per share). Relatedly, a Retail order that takes liquidity from a displayed odd lot order in a Tape A or C security will be assigned Fee Code Combination TLR (free execution), and the displayed odd lot order will be assigned Fee Code Combination ML (rebate of \$0.0014 per share).

IEX also proposes to modify Fee Code Modifier “K” to reflect the proposed fee changes. Currently, Fee Code Modifier K is only 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. With this proposed fee change, Fee Code Modifier K would apply to any D-Peg, FM-Peg, M-Peg, or P-Peg order that removes displayed liquidity (including orders for Tape A and C securities). Therefore, IEX proposes to remove the words “(Tape B)” from the description of Fee Code K.

To reflect the above-described fee changes, IEX proposes to make the following changes to its Fee Schedule:

- Modify Fee Code Combination ML (Adds displayed liquidity) to reflect the new rebate of \$0.0014 per share for adding displayed liquidity in Tape A and C securities (an increase from the current rebate of \$0.0004 per share).
- Modify Fee Code Combination MLY (Post Only order adds liquidity against resting non-displayed order) to reflect the new rebate of \$0.0014 per share for adding displayed liquidity in Tape A and C securities (an increase from the current rebate of \$0.0004 per share).
- Modify Fee Code Combination TL (Removes displayed liquidity) to reflect the new fee of \$0.0020 per share for removing displayed liquidity in Tape A and C securities (an increase from the current fee of \$0.0010 per share).
- Modify Fee Code Combination TLY (Post Only order removes displayed liquidity) to reflect the new fee of \$0.0020 per share for removing displayed liquidity in Tape A and C securities (an increase from the current fee of \$0.0010 per share).

- Modify Fee Code Combination TLW (Resting non-displayed order removes liquidity against incoming Post Only order) to reflect the new fee of \$0.0020 per share for removing displayed liquidity in Tape A and C securities (an increase from the current fee of \$0.0010 per share).
- Introduce new Fee Code Combination TLK with the description “Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity.” These executions of Tape A and C securities would 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, which are the same fees charged for TLBK, the Fee Code Combination that applies to D-Peg, FM-Peg, M-Peg, and P-Peg orders that take displayed liquidity in Tape B securities. In addition, and as described below, TLK will be modified by footnote 3 to the Fee Code Combinations and Associated Fees table.

IEX also proposes to modify footnote 3 to reflect the updated circumstances in which Fee Code Modifier “K” would apply. Currently, 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.

With the introduction of Fee Code Combination TLK, IEX proposes to modify footnote 3 to reflect that neither Fee Code Combination TLBK nor TLK would apply to any M-Peg and FM-Peg orders with Trade Now functionality enabled that take liquidity from an incoming Post Only order, and that such orders would be assigned Fee Code Combinations TLWB and TLW, respectively. As discussed above, these executions would incur a fee of \$0.0020 per share for taking displayed liquidity in Tape A, B, and C securities. IEX therefore proposes to modify footnote 3, so that it reads as follows:

TLBK and TLK 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; such executions will be assigned Fee Code Combinations TLWB and TLW, respectively.

(b) Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>21</sup> of the Act in general and furthers the objectives of Sections 6(b)(4)<sup>22</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. 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 A and C securities without offering higher rebate incentives. As discussed in the Purpose section, the Exchange recently instituted identical fee changes for Tape B securities to incentivize the posting of displayed liquidity in Tape B securities.<sup>23</sup> Based upon the Tape B fee changes and informal discussions with market participants, IEX believes that Members and other market participants may be more willing to send displayed orders in Tape A and C 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 A and C securities as well as order flow seeking to trade with such displayed orders. Moreover, increases in displayed liquidity of Tape A and C securities would contribute to the public price discovery process which would benefit all market participants and protect investors and the public interest.

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<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(4).

<sup>23</sup> See supra note 9.

As it has stated repeatedly, IEX believes that the existing access fee level of \$0.0030 per share set by Rule 610 of Regulation NMS<sup>24</sup> 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.<sup>25</sup> 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.

Accordingly, IEX has designed this proposed rebate to attract and incentivize displayed order flow in Tape A and C securities as well as order flow seeking to trade with displayed order flow in Tape A and C securities. Moreover, increases in displayed liquidity of Tape A and C 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 A and C securities is reasonable and consistent with the Act.

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<sup>24</sup> 17 CFR § 242.610.

<sup>25</sup> 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>.

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 A and C securities and to increase the fee for removing displayed liquidity in Tape A and C securities from \$0.0010 per share to \$0.0020 per share, which is designed to keep IEX's displayed trading prices for Tape A and C securities competitive with those of other exchanges.<sup>26</sup> In this regard, IEX notes that while many competing exchanges pay rebates to provide displayed liquidity in Tape A and C securities that are substantially higher than those proposed, others charge fees to provide displayed liquidity for Tape A and C securities that trade at or above \$1.00 per share.<sup>27</sup> 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.<sup>28</sup> And, as discussed in the Purpose section, this fee proposal

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<sup>26</sup> As discussed in the Purpose section, IEX's proposed rebate of \$0.0014 per share for displayed liquidity adding orders in Tape A and C securities priced at \$1.00 or more is below the rebate ranges of \$0.0015 to \$0.0035 per share and \$0.0018 to \$0.00305 per share paid by MEMX and Nasdaq, respectively, for displayed liquidity adding orders. And IEX's proposed fee of \$0.0020 per share 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 8.

<sup>27</sup> See e.g., Nasdaq BX Equity 7 Section 118(a) (\$0.0020 fee per share to add displayed liquidity in Tape A and C 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 A and C securities priced at or above \$1.00 per share, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/byx/](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 A and C securities priced at or above \$1.00 per share, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/edga/](https://www.cboe.com/us/equities/membership/fee_schedule/edga/).

<sup>28</sup> See e.g., Cboe BZX Equities Fee Schedule (\$0.0030 fee per share to remove displayed liquidity in Tape A and C securities priced at or above \$1.00 per share), available at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); MIAX Pearl Equities Exchange Fee Schedule (\$0.00295 fee per share to remove displayed liquidity in in Tape A and C 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\\_05012024.pdf](https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_05012024.pdf); MEMX Fee Schedule (\$0.0030 fee per

is identical to a recent fee change IEX made specifically for Tape B securities.<sup>29</sup>

Consequently, IEX believes that the proposed fee structure for providing and removing displayed liquidity in Tape A and C 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). 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.

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share to remove displayed liquidity in in Tape B securities priced at or above \$1.00 per share), available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/>; Nasdaq Equity 7 Section 118(a) (up to \$0.0030 fee per share to remove displayed liquidity in in Tape A and C 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 A and C securities priced at or above \$1.00 per share), available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf).

<sup>29</sup> See *supra* note 9.

However, if an incoming Post Only order for a Tape A or C security executes against a resting M-Peg or FM-Peg order with the Trade Now 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 A or C 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 A and C 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 A or C 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 A and C securities.

The Exchange also believes that it is reasonable and consistent with the Act not to modify its displayed fees for sub-dollar executions. 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.<sup>30</sup>

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 fees that is also not unfairly discriminatory.

First, the fees for adding and removing displayed liquidity in Tape A and C 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 A or C 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

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<sup>30</sup> See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR-IEX-2019-05).

each trade is determinable at the time of the trade.<sup>31</sup>

Finally, as discussed above, to the extent that the current regulatory structure effectively compels exchanges to offer financial inducements to compete with other exchanges to obtain liquidity, the proposed change is intended to increase IEX's ability to compete within the existing regulatory structure pending changes to that structure, and incentivize greater liquidity, which 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.

#### 4. 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 among 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

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<sup>31</sup> See Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266, 80292-93 (December 29, 2022) (File No. S7-30-22).

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 A or C 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>32</sup> IEX has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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<sup>32</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>33</sup>

8. Proposed Rule Change Based on the Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of Proposed Rule Change.

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<sup>33</sup> 15 U.S.C. 78s(b)(2)(B).

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2024-09

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange’s Fee Schedule Pursuant to IEX Rule 15.110(a) and (c).

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on (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 Act<sup>4</sup>, and Rule 19b-4 thereunder<sup>5</sup>, the Exchange is filing with the Commission a proposed rule change to amend the Exchange’s fee schedule applicable to Members<sup>6</sup> (the “Fee Schedule”) pursuant to IEX Rule 15.110(a) and (c). Changes to the Fee Schedule pursuant to this

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> See IEX Rule 1.160(s).

proposal are effective upon filing<sup>7</sup>, and will be operative on June 1, 2024.

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 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 Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to modify the transaction fees applicable to most<sup>8</sup> displayed executions of Tape A and C securities.<sup>9</sup> As proposed, the Exchange will increase the rebate paid for executions of displayed liquidity adding orders in Tape A and C securities with an

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> This fee proposal will not change the fees charged or fee codes applied for Retail and Retail Liquidity Providing executions of Tape A and C securities, which execute for free. Additionally, while the fee proposal includes a fee code change for all other executions of Tape A and C 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 A and C securities.

<sup>9</sup> "Tape A securities" are securities listed on the New York Stock Exchange, and "Tape C securities" are securities listed on The Nasdaq Stock Market.

execution price of \$1.00 per share or more from \$0.0004 to \$0.0014 per share, increase the fee for executions of most<sup>10</sup> displayed liquidity removing orders in Tape A or C securities from \$0.0010 to \$0.0020 per share (unless a lower fee applies), and update the fee codes in the Fee Schedule to reflect these changes. IEX is not proposing any changes to executions that add or remove non-displayed liquidity in Tape A or C securities, which will continue to be subject to the same fees currently charged for such executions in Tape A and C securities. IEX's proposed fee structure for executions of Tape A and C 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.<sup>11</sup>

IEX is making this proposal to incentivize the posting of displayed liquidity in Tape A and C 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 A and C securities priced at or above \$1.00 per share. Further, the Exchange recently instituted identical fee changes for Tape B securities to incentivize the posting of displayed liquidity in Tape B securities.<sup>12</sup> IEX is now proposing to make the same fee

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<sup>10</sup> See *supra* note 8.

<sup>11</sup> See, e.g., MEMX Equities Fee Schedule, (effective May 1, 2024), available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/> (offering rebates for adding displayed liquidity of \$0.0015 to \$0.0033, depending upon trading volume, and charging as much as \$0.0030 to remove liquidity); 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](https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_118_nasdaq_market_center_order_execution_and_routing) (offering rebates for adding displayed liquidity of \$0.0018 to \$0.00305, depending upon trading volume, and charging as much as \$0.0030 to remove displayed liquidity).

<sup>12</sup> See Securities Exchange Act Release No. 99989 (April 18, 2024), 89 FR 31231 (April 24, 2024)

changes for orders that add or remove displayed liquidity in Tape A and C securities.

#### Fee Schedule Changes

IEX proposes to increase the rebate it pays for adding displayed liquidity in Tape A and C securities from \$0.0004 per share to \$0.0014 per share for executions priced at or above \$1.00 per share. Consistent with the higher rebate IEX will pay for adding displayed liquidity in Tape A and C securities, IEX proposes to increase the fee for removing displayed liquidity in Tape A and C securities from \$0.0010 per share to \$0.0020 per share.

“Sub-dollar”<sup>13</sup> executions of Tape A and C securities that add displayed liquidity will continue to execute for free. Sub-dollar executions of Tape A and C 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”)<sup>14</sup>, Fixed Midpoint Peg (“FM-Peg”)<sup>15</sup>, Midpoint Peg (“M-Peg”)<sup>16</sup>, or Primary Peg (“P-Peg”)<sup>17</sup> orders that remove displayed liquidity in Tape A or C securities. IEX notes that each of these four order types is designed to execute within the spread (i.e., at a price between the NBBO<sup>18</sup>). IEX understands that Members and other market participants typically use these order types with the expectation that they will

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(SR-IEX-2024-06) (“Tape B Fee Filing”).

<sup>13</sup> “Sub-dollar” refers to orders or executions priced at less than \$1.00 per share.

<sup>14</sup> See IEX Rule 11.190(b)(10).

<sup>15</sup> See IEX Rule 11.190(b)(19).

<sup>16</sup> See IEX Rule 11.190(b)(9).

<sup>17</sup> See IEX Rule 11.190(b)(8).

<sup>18</sup> See IEX Rule 1.160(u).

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 Book<sup>19</sup> 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 A or C security in one of the above-listed circumstances.

Notwithstanding this exception, if an incoming Post Only<sup>20</sup> order for a Tape A or C security executes against a resting M-Peg or FM-Peg order with the Trade Now<sup>21</sup> 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 A or C 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

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<sup>19</sup> See IEX Rule 11.230(a)(4)(D).

<sup>20</sup> See IEX Rule 11.190(b)(20).

<sup>21</sup> 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).

share fee IEX will charge for taking displayed liquidity in Tape A and C securities.

IEX is not proposing to change the fees charged or fee codes applied to Retail<sup>22</sup> or Retail Liquidity Provider<sup>23</sup> orders that execute in Tape A or C securities. Thus, a Retail order that takes liquidity from a non-displayed order in a Tape A or C security will be assigned Fee Code Combination TIR (free execution), and the non-displayed order will be assigned Fee Code Combination MI (fee of \$0.0010 per share). Relatedly, a Retail order that takes liquidity from a displayed odd lot order in a Tape A or C security will be assigned Fee Code Combination TLR (free execution), and the displayed odd lot order will be assigned Fee Code Combination ML (rebate of \$0.0014 per share).

IEX also proposes to modify Fee Code Modifier “K” to reflect the proposed fee changes. Currently, Fee Code Modifier K is only 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. With this proposed fee change, Fee Code Modifier K would apply to any D-Peg, FM-Peg, M-Peg, or P-Peg order that removes displayed liquidity (including orders for Tape A and C securities). Therefore, IEX proposes to remove the words “(Tape B)” from the description of Fee Code K.

To reflect the above-described fee changes, IEX proposes to make the following changes to its Fee Schedule:

- Modify Fee Code Combination ML (Adds displayed liquidity) to reflect the new rebate of \$0.0014 per share for adding displayed liquidity in Tape A and C securities (an increase from the current rebate of \$0.0004 per share).

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<sup>22</sup> See IEX Rule 11.190(b)(15).

<sup>23</sup> 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 A or C security.

- Modify Fee Code Combination MLY (Post Only order adds liquidity against resting non-displayed order) to reflect the new rebate of \$0.0014 per share for adding displayed liquidity in Tape A and C securities (an increase from the current rebate of \$0.0004 per share).
- Modify Fee Code Combination TL (Removes displayed liquidity) to reflect the new fee of \$0.0020 per share for removing displayed liquidity in Tape A and C securities (an increase from the current fee of \$0.0010 per share).
- Modify Fee Code Combination TLY (Post Only order removes displayed liquidity) to reflect the new fee of \$0.0020 per share for removing displayed liquidity in Tape A and C securities (an increase from the current fee of \$0.0010 per share).
- Modify Fee Code Combination TLW (Resting non-displayed order removes liquidity against incoming Post Only order) to reflect the new fee of \$0.0020 per share for removing displayed liquidity in Tape A and C securities (an increase from the current fee of \$0.0010 per share).
- Introduce new Fee Code Combination TLK with the description “Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity.” These executions of Tape A and C securities would 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, which are the same fees charged for TLBK, the Fee Code Combination that applies to D-Peg, FM-Peg, M-Peg, and P-Peg orders that take displayed liquidity in Tape B securities. In addition, and as described below, TLK will be modified by footnote 3 to the Fee Code Combinations and Associated Fees table.

IEX also proposes to modify footnote 3 to reflect the updated circumstances in which Fee Code Modifier “K” would apply. Currently, 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.

With the introduction of Fee Code Combination TLK, IEX proposes to modify footnote 3 to reflect that neither Fee Code Combination TLBK nor TLK would apply to any M-Peg and FM-Peg orders with Trade Now functionality enabled that take liquidity from an incoming Post Only order, and that such orders would be assigned Fee Code

Combinations TLWB and TLW, respectively. As discussed above, these executions would incur a fee of \$0.0020 per share for taking displayed liquidity in Tape A, B, and C securities. IEX therefore proposes to modify footnote 3, so that it reads as follows:

TLBK and TLK 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; such executions will be assigned Fee Code Combinations TLWB and TLW, respectively.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>24</sup> of the Act in general and furthers the objectives of Sections 6(b)(4)<sup>25</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. 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 A and C securities without offering higher rebate incentives. As discussed in the Purpose section, the Exchange recently instituted identical fee changes for Tape B securities to incentivize the posting of displayed liquidity in Tape B securities.<sup>26</sup> Based upon the Tape B fee changes and informal discussions with market participants, IEX believes that Members and other market participants may be more willing to send displayed orders in Tape A and C securities to

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<sup>24</sup> 15 U.S.C. 78f.

<sup>25</sup> 15 U.S.C. 78f(b)(4).

<sup>26</sup> See supra note 12.

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 A and C securities as well as order flow seeking to trade with such displayed orders. Moreover, increases in displayed liquidity of Tape A and C 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 NMS<sup>27</sup> 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.<sup>28</sup> 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.

Accordingly, IEX has designed this proposed rebate to attract and incentivize displayed order flow in Tape A and C securities as well as order flow seeking to trade

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<sup>27</sup> 17 CFR § 242.610.

<sup>28</sup> 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>.

with displayed order flow in Tape A and C securities. Moreover, increases in displayed liquidity of Tape A and C 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 A and C 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 A and C securities and to increase the fee for removing displayed liquidity in Tape A and C securities from \$0.0010 per share to \$0.0020 per share, which is designed to keep IEX's displayed trading prices for Tape A and C securities competitive with those of other exchanges.<sup>29</sup> In this regard, IEX notes that while many competing exchanges pay rebates to provide displayed liquidity in Tape A and C securities that are substantially higher than those proposed, others charge fees to provide displayed liquidity for Tape A and C securities that trade at or above \$1.00 per share.<sup>30</sup> Further, IEX notes that for securities that trade at or above \$1.00 per share,

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<sup>29</sup> As discussed in the Purpose section, IEX's proposed rebate of \$0.0014 per share for displayed liquidity adding orders in Tape A and C securities priced at \$1.00 or more is below the rebate ranges of \$0.0015 to \$0.0035 per share and \$0.0018 to \$0.00305 per share paid by MEMX and Nasdaq, respectively, for displayed liquidity adding orders. And IEX's proposed fee of \$0.0020 per share 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 11.

<sup>30</sup> See e.g., Nasdaq BX Equity 7 Section 118(a) (\$0.0020 fee per share to add displayed liquidity in Tape A and C 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 A and C securities priced at or above \$1.00 per share, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/byx/](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 A and C securities priced at or above \$1.00 per share, available at

many competing exchanges charge substantially higher fees to remove displayed liquidity than those charged by IEX.<sup>31</sup> And, as discussed in the Purpose section, this fee proposal is identical to a recent fee change IEX made specifically for Tape B securities.<sup>32</sup>

Consequently, IEX believes that the proposed fee structure for providing and removing displayed liquidity in Tape A and C 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). 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

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[https://www.cboe.com/us/equities/membership/fee\\_schedule/edga/](https://www.cboe.com/us/equities/membership/fee_schedule/edga/).

<sup>31</sup> See e.g., Cboe BZX Equities Fee Schedule (\$0.0030 fee per share to remove displayed liquidity in Tape A and C securities priced at or above \$1.00 per share), available at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); MIAX Pearl Equities Exchange Fee Schedule (\$0.00295 fee per share to remove displayed liquidity in in Tape A and C 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\\_05012024.pdf](https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_05012024.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/equities-trading-resources/us-equities-fee-schedule/>; Nasdaq Equity 7 Section 118(a) (up to \$0.0030 fee per share to remove displayed liquidity in in Tape A and C 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 A and C securities priced at or above \$1.00 per share), available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf).

<sup>32</sup> See *supra* note 12.

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 Only order for a Tape A or C security executes against a resting M-Peg or FM-Peg order with the Trade Now 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 A or C 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 A and C 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 A or C 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 A and C securities.

The Exchange also believes that it is reasonable and consistent with the Act not to modify its displayed fees for sub-dollar executions. 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.<sup>33</sup>

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 fees that is also not unfairly discriminatory.

First, the fees for adding and removing displayed liquidity in Tape A and C 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 A or C security. IEX believes this aspect of its fee proposal will assist all Members in making decisions about

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<sup>33</sup> See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR-IEX-2019-05).

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.<sup>34</sup>

Finally, as discussed above, to the extent that the current regulatory structure effectively compels exchanges to offer financial inducements to compete with other exchanges to obtain liquidity, the proposed change is intended to increase IEX's ability to compete within the existing regulatory structure pending changes to that structure, and incentivize greater liquidity, which 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 among competing venues or their participants. Moreover, as noted in the Statutory Basis section, the Exchange believes that the proposed changes do not raise any

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<sup>34</sup> See Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266, 80292-93 (December 29, 2022) (File No. S7-30-22).

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 A or C 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.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>35</sup> of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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<sup>35</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>36</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 (<https://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-2024-09 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-2024-09. 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

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<sup>36</sup> 15 U.S.C. 78s(b)(2)(B).

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-2024-09 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>37</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5 – Text of Proposed Rule Change

Proposed new language is underlined; proposed deletions are in brackets.

### Investors Exchange Fee Schedule

Effective [~~May 2, 2024~~]May 20, 2024

Underlined text (additions to the Fee Schedule) and bracketed text (deletions from the Fee Schedule) will be operative on June 1, 2024.

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#### Fee Code Modifiers:

Additional Fee Codes	Description	Fee
Y	Post Only order executes on entry	See Relevant Fee Code Combinations Below
W	Resting order removes against Post Only order	See Relevant Fee Code Combinations Below
D	Discounted Single-Price Cross Fee: displayed interest resting on the Continuous Book executes in a cross or auction	FREE
R <sup>1</sup>	Retail Order Fee: Retail order removes liquidity	FREE
A	Retail Liquidity Provider Order Fee: Member adds liquidity against a Retail order with a Retail Liquidity Provider order	FREE
B <sup>2</sup>	Tape B security	See Relevant Fee Code Combinations Below
K	Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity [(Tape B)]	See Relevant Fee Code Combinations Below

#### Fee Code Combinations and Associated Fees:

Fee Codes	Description	Executions at or above \$1.00	Executions below \$1.00
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MI	Adds non-displayed liquidity	\$0.0010	0.10% of TDV
MIB <sup>2</sup>	Adds non-displayed liquidity (Tape B)	\$0.0010	0.10% of TDV
ML	Adds displayed liquidity	<u>(\$0.0014)</u> [ <u>(\$0.0004)</u> ]	FREE
MLB <sup>2</sup>	Adds displayed liquidity (Tape B)	(\$0.0014)	FREE
MLY	Post Only order adds liquidity against resting non-displayed order	<u>(\$0.0014)</u> [ <u>(\$0.0004)</u> ]	N/A
MLYB <sup>2</sup>	Post Only order adds liquidity against resting non-displayed order (Tape B)	(\$0.0014)	N/A
TI	Removes non-displayed liquidity	\$0.0010	0.10% of TDV
TIB <sup>2</sup>	Removes non-displayed liquidity (Tape B)	\$0.0010	0.10% of TDV
TIY	Post Only order removes non-displayed liquidity	\$0.0010	N/A
TIYB <sup>2</sup>	Post Only order removes non-displayed liquidity (Tape B)	\$0.0010	N/A
TL	Removes displayed liquidity	<u>\$0.0020</u> [ <u>\$0.0010</u> ]	0.09% of TDV
TLB <sup>2</sup>	Removes displayed liquidity (Tape B)	\$0.0020	0.09% of TDV
<u>TLK<sup>3</sup></u>	<u>Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity</u>	<u>\$0.0010</u>	<u>0.09% of TDV</u>
TLBK <sup>23</sup>	Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity (Tape B)	\$0.0010	0.09% of TDV
TLY	Post Only order removes displayed liquidity	<u>\$0.0020</u> [ <u>\$0.0010</u> ]	N/A
TLYB <sup>2</sup>	Post Only order removes displayed liquidity (Tape B)	\$0.0020	N/A
TIR <sup>1</sup>	Retail order removes non-displayed liquidity	FREE	FREE
TLW	Resting non-displayed order removes liquidity against incoming Post Only order	<u>\$0.0020</u> [ <u>\$0.0010</u> ]	N/A

TLWB <sup>2</sup>	Resting non-displayed order removes liquidity against incoming Post Only order (Tape B)	\$0.0020	N/A
MIA	Retail Liquidity Provider order adds non-displayed liquidity that executes against a Retail order	FREE	FREE
TLR <sup>1</sup>	Retail order removes displayed liquidity	FREE	FREE
X	Opening Process for Non-Listed Securities (“Opening Process”)	\$0.0010	0.10% of TDV
XD	Displayed interest resting on the Continuous Book executes in the Opening Process	FREE	FREE
O	Opening Auction, IEX-listed security	\$0.0003	0.30% of TDV
OD	Displayed interest resting on the Continuous Book executes in the Opening Auction	FREE	FREE
C	Closing Auction, IEX-listed security	\$0.0003	0.30% of TDV
CD	Displayed interest resting on the Continuous Book executes in the Closing Auction	FREE	FREE
H	Halt or Volatility Auction, IEX-listed security	\$0.0003	0.30% of TDV
P	IPO Auction, IEX-listed security	\$0.0003	0.30% of TDV

### Footnotes

<sup>1</sup> **Fee Code R:** Fee Code R applies only to a Retail order submitted by an IEX Retail Member Organization that (i) satisfies the criteria set forth in IEX Rules 11.190(b)(15) and 11.232(a)(1) and (ii) is a Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK.

<sup>2</sup> **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.

<sup>3</sup> TLBK and TLK 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 Combinations TLWB and TLW, respectively.

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