

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 44

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

File No. * SR 2024 - * 13

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"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	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 * Nathaniel Last Name * Kolodny

Title * Lead Regulation Counsel

E-mail * nathaniel.kolodny@iextrading.com

Telephone * (646) 343-2034 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 07/31/2024 (Title *)

By Nathaniel Kolodny (Name *) Lead Regulation Counsel

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: 2024.07.31 14:55:32 -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 EFFS website.

Form 19b-4 Information *

Add Remove View

August 1 2024 fee filing 19b-4 - SEC f

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 *

Add Remove View

August 1 2024 fee filing Ex. 1 - SEC fi

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 *

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

August 1 2024 fee filing Ex. 5 - SEC fil

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

Add Remove View

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”)¹, and Rule 19b-4 thereunder², 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 Members³ (the “Fee Schedule”⁴) pursuant to IEX Rule 15.110(a) and (c). Changes to the Fee Schedule pursuant to this proposal are effective upon filing⁵, and will be operative on August 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See IEX Rule 1.160(s).

⁴ See Investors Exchange Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

respect to the proposed rule change are complete.

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
917-509-9001

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 introduce two different tier-based volume-based pricing structures designed to improve market quality on the Exchange by incentivizing Members to send more displayed liquidity adding orders to the Exchange. The first tier-based structure will provide for an enhanced rebate for executions of displayed liquidity adding orders priced at or above \$1.00 per share applicable to Members that meet certain liquidity adding requirements specified below. The second tier-based structure will provide for a higher fee for displayed liquidity removing orders priced at or above \$1.00 per share applicable to Members that do not trade a minimum amount of displayed liquidity adding volume as specified below.

Displayed Liquidity Adding Rebate Tiers

The Exchange proposes to introduce a tiered pricing structure applicable to the rebates provided for executions of displayed liquidity adding orders⁶ priced at or above

⁶ This higher rebate would apply to any orders assigned Fee Code Combinations ML, MLB, MLY, and MLYB.

\$1.00 per share (“Added Displayed Liquidity”).⁷ Specifically, the Exchange proposes to revise its Fee Schedule to set forth two volume-based rebate tiers: Tier 1 and Tier 2 (referred to in the Fee Schedule as the “Displayed Liquidity Adding Rebate Tiers”).

As proposed, Tier 1 will provide the Exchange’s current base rebate of \$0.0014 per share to all Added Displayed Liquidity for Members that add less than 10,000,000 ADV.⁸ of Added Displayed Liquidity. And Tier 2 will provide a rebate of \$0.0020 per share to all Added Displayed Liquidity for Members that add at least 10,000,000 ADV of Added Displayed Liquidity (a rebate of \$0.0006 more per share than the rebate provided currently and pursuant to Tier 1). IEX notes that this model of offering volume-based rebates is consistent with the rebates offered by competitor exchanges.⁹ The Exchange also notes that the new proposed rebate for Tier 2 (as well as the current rebate that will be applicable to Tier 1) is lower than the highest rebates offered by competing exchanges.¹⁰

Accordingly, IEX proposes to update its Fee Schedule to make several revisions to reflect the proposed rebate tiers. First, the Exchange proposes to amend the Base Rates table to update the description and fees associated with Base Fee Code ML (“Add

⁷ Nothing in this rule filing affects trades below \$1.00 per share (“sub-dollar trades”). Sub-dollar trades would not impact the rebate tier calculations and remain ineligible for rebates.

⁸ As proposed, IEX will introduce the following definition of ADV: “ADV” means average daily volume calculated as the number of shares added or removed that execute at or above \$1.00 per share, combined, per day. ADV is calculated on a monthly basis.

⁹ See, e.g., MEMX Equities Fee Schedule (Effective July 16, 2024), available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/>. However, IEX’s proposed Tier 2 would be based on each Member’s ADV, without a requirement to meet a total consolidated volume threshold.

¹⁰ See, e.g., MEMX Equities Fee Schedule, *supra* note 9 (maximum rebate of \$0.0037); Nasdaq Equity VII, Section 114 (maximum rebate of \$0.0036); New York Stock Exchange Price List 2024 (as of June 3, 2024), https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf (maximum rebate of \$0.0035).

displayed liquidity”). As amended, the Base Rates table will list two base rates for Fee Code ML – the \$0.0014 rebate applied if “Member adds less than 10,000,000 ADV of displayed liquidity” and the higher \$0.0020 rebate applied if “Member adds at least 10,000,000 ADV of displayed liquidity.”

IEX also proposes to add Footnote 4 to the Transaction Fees section, which will be applicable to fee code ML in the Base Rates table, and to Fee Code Combinations ML, MLB, MLY, and MLYB in the Fee Code Combination and Associated Fees table. As proposed, Footnote 4 is titled “Displayed Liquidity Adding Rebate Tiers (Applicable to Executions at or above \$1)” and followed by a table describing Tier 1 and Tier 2, including the required criteria for each rebate tier and the applicable rebate, as described above.

The new rebate tiers are based on each Member’s ADV, which is not currently defined in IEX’s Fee Schedule. Therefore, IEX also proposes to update the list of “Definitions” in the Transaction Fees section of the Fee Schedule by renaming it “Definitions and Information”, and adding a definition of ADV and relevant information thereof to the list:

- “ADV” means average daily volume calculated as the number of shares added or removed (as applicable) that execute at or above \$1.00 per share, combined, per day. ADV is calculated on a monthly basis.
 - The Exchange excludes from its calculations of ADV any trading day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours and any day with a scheduled early market close.
 - Routed shares executed away from IEX are not included in ADV calculation.
 - Auction and Opening Process executed shares are not included in ADV calculation.
 - With prior notice to the Exchange, a Member may aggregate ADV with other Members with which the Member is affiliated pursuant to Rule 12b-2 under the Act.

In calculating a Member's ADV, the numerator will be the share volume of applicable transactions (i.e., adding, removing, displayed, non-displayed, as applicable) during the month and the denominator will be the total number of eligible trading days in the month.

As noted above, when calculating ADV, the Exchange will exclude days with system disruptions that last for more than 60 minutes and days with scheduled early closes when determining the numerator and the denominator. An Exchange system disruption may occur, for example, where a certain group of securities traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. The Exchange believes that these types of Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining a Member's ADV to avoid penalizing Members that might otherwise have met the ADV requirements for the higher rebate provided for in Tier 2. For similar reasons, the Exchange believes it is appropriate to exclude trading days with scheduled early closes, because the shorter trading days are likely to result in a lower monthly average daily trading volume for each Member. The Exchange notes that excluding system disruption days and trading days with scheduled early closes is consistent with the

methodologies used by other exchanges when calculating each member's ADV.¹¹

The Exchange will exclude routed shares that executed away from the Exchange from its ADV calculations because, by definition, these are not trades that added displayed liquidity to the Exchange.¹² The Exchange notes that excluding routed shares from the calculation of ADV is also consistent with the practice of other exchanges when calculating ADV.¹³ And the Exchange will exclude executions in the opening process for non-listed securities from its ADV calculations, because they are not eligible for any rebates and the adding and removing liquidity concepts are not applicable to the opening process.¹⁴

The Exchange will allow Members to aggregate their ADV with other Members with which they are affiliated¹⁵, if Members provide prior notice to the Exchange. As proposed, to the extent that two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange would permit such Members to aggregate their ADV. Members will be responsible for having proper internal documentation in their books and records substantiating that the two or more Members seeking to aggregate their ADV are affiliates of one another. IEX notes that this grouping of Member affiliates is consistent with how IEX allows Member

¹¹ See, e.g., MEMX Equities Fee Schedule, supra note 9.

¹² IEX also notes that it only charges Members a nominal fee of \$0.0001 on top of the away market's transaction fee for each routable share that executes away from the Exchange.

¹³ See, e.g., MEMX Equities Fee Schedule, supra note 9.

¹⁴ Similarly, in the event that the Exchange were to have auctions, such transactions would also be excluded.

¹⁵ As defined in Rule 12b-2 under the Act, 17 CFR 240.12b-2.

affiliates to apply IEX's optional anti-internalization functionality across affiliates¹⁶, and is already a common practice for exchanges that offer tiered rebates, in order to not penalize two affiliated members when calculating rebate tiers.¹⁷

As noted above, the Exchange is not proposing to change the fees applicable to executions of and with orders with an execution price below \$1.00 per share, which would remain free for such orders that provide displayed liquidity and subject to a fee of 0.09% of the total dollar volume of the execution for orders that take displayed liquidity. IEX is also not proposing to make any changes to the fees applicable to the execution of Retail¹⁸ orders that remove displayed liquidity, which will continue to execute for free.

The Exchange believes the proposed Displayed Liquidity Adding Rebate Tier structure would provide an incremental incentive for Members to send more orders to the Exchange in an effort to qualify for the proposed enhanced rebate offered by Tier 2 for executions of Added Displayed Volume. As such, the proposed Displayed Liquidity Adding Rebate Tiers are designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue.

Displayed Liquidity Removing Fee Tiers:

The Exchange also proposes to introduce a tiered pricing structure applicable to the fees charged for executions of displayed liquidity removing orders priced at or above

¹⁶ See IEX Rule 11.190(e)(1)(B).

¹⁷ See, e.g., the Nasdaq Stock Market LLC Equity 7, Section 127 ("Aggregation of Activity of Affiliated Members").

¹⁸ See IEX Rule 11.190(b)(15).

\$1.00 per share. Specifically, the Exchange proposes to revise its Fee Schedule to set forth two volume-based fee tiers: Tier 1 and Tier 2 (referred to in the Fee Schedule as the “Displayed Liquidity Removing Fee Tiers”).

As proposed, Tier 1 will apply a new \$0.0030 per share fee to all displayed liquidity removing orders for Members that add less than 25,000 ADV of Added Displayed Liquidity. And Tier 2 will apply the Exchange’s current base displayed liquidity removing fee of \$0.0020 per share to all displayed liquidity removing orders for Members that add at least 25,000 ADV of Added Displayed Liquidity.¹⁹

Accordingly, IEX proposes to update its Fee Schedule to amend the Base Rates table to update the description and fees associated with Base Fee Code TL (“Remove displayed liquidity”). As amended, the Base Rates table will list two base rates for Fee Code TL – the current \$0.0020 fee applied if a “Member adds at least 25,000 ADV of displayed liquidity”, and the new \$0.0030 fee applied if a “Member adds less than 25,000 ADV of displayed liquidity.”

IEX also proposes to add Footnote 5 to the Transaction Fees section, which will be applicable to fee code TL in the Base Rates table, and to fee code combinations TL, TLB, TLY, TLYB, TLW, and TLWB in the Fee Code Combination and Associated Fees table. As proposed, Footnote 5 is titled “Displayed Liquidity Removing Fee Tiers (Applicable to Executions at or above \$1)” and followed by a table describing Tier 1 and Tier 2, including the required criteria for each tier and the applicable fee, as described above.

¹⁹ For purposes of determining a Member’s Displayed Liquidity Removing Fee Tier, the Exchange will conduct the same ADV calculation described above.

The Exchange believes it is reasonable to charge its members an increased fee for removing displayed liquidity from the Exchange if they do not trade a minimum amount of Added Displayed Liquidity volume on the Exchange. The proposed higher displayed liquidity removing fee in Tier 1 is designed to incentivize Members to maintain a minimum level of displayed adding activity on the Exchange. The Exchange notes this fee is consistent with other “maker-taker” exchanges that charge higher fees of members to remove liquidity if the members do not qualify for any volume tiers.²⁰ Similarly, some “taker-maker” exchanges charge liquidity removal fees of Members that do not maintain a meaningful level of liquidity adding activity. For example, Nasdaq BX charges \$0.0007 per share for all liquidity removing orders if the member does not add at least 50,000 ADV (by contrast, members that add at least 50,000 ADV qualify for at least a \$0.0005 per share rebate).²¹ The Exchange periodically assesses its fee structure and based upon a recent assessment, the Exchange believes that these proposed pricing changes would further incentivize Members to submit displayed orders in securities priced at or above \$1.00 per share. The proposed fee changes are designed to incentivize posting displayed liquidity on IEX in securities priced at or above \$1.00 per share in order to address competitive factors (as discussed more thoroughly in the Statutory Basis section) and facilitate price discovery and price formation, which the Exchange believes

²⁰ See, e.g., New York Stock Exchange Price List 2024 (as of June 3, 2024), supra note 10 (charging \$0.0030 per share for liquidity removing orders, but charging between \$0.00285 and \$0.00295 for the same orders if the member adds between 0.05% and 1.05% ADV of the Consolidated Average Daily Volume); see also MEMX Equities Fee Schedule, supra note 9 (charging \$0.0030 per share for liquidity removing orders, but charging \$0.00295 for the same orders if the member’s ADV qualifies it for MEMX’s Liquidity Removal Tier by having an ADV greater than or equal to 0.70% of the Total Consolidated Volume, including at least .35% of the Total Consolidated Volume remove ADV).

²¹ See Nasdaq BX Equity VII, Section 118.

benefits all Members and market participants.

(b) Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²² of the Act in general, and furthers the objectives of Sections 6(b)(4)²³ 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.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. IEX has concluded that, in the context of current regulatory requirements governing access fees and rebates, it will be able to more effectively compete with other exchanges for order flow by offering higher rebate incentives. Based upon informal discussions with market participants, IEX believes that Members and other market participants may be more willing to send displayed orders to IEX if the proposed fee structure was adopted.

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

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(4).

As it has stated repeatedly, IEX believes that the existing access fee level of \$0.0030 per share set by Rule 610 of Regulation NMS²⁴ 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 substantially reducing the access fee cap for all NMS stocks, a step that is 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.²⁵ 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.

Thus, as discussed in the Purpose section, the Exchange believes that the proposed adoption of a volume-based rebate tier that provides higher rebates for Members that provide a relatively higher ADV of displayed liquidity is reasonable and consistent with the Act because it is designed to incentivize Members to add additional displayed orders on IEX. Specifically, the Exchange believes that the volume-based rebate tiers are reasonably designed to incentivize Members to add a meaningful volume of displayed liquidity by providing a \$0.0006 higher rebate for Members that qualify for Tier 2 than it provides to Members that qualify for Tier 1. As noted in the Purpose

²⁴ 17 CFR 242.610.

²⁵ 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>.

section, other exchanges offer rebate tiers, and thus the Exchange does not believe that this aspect of the proposal raises any new or novel issues not already considered by the Commission.

The Exchange also believes that adding to the Fee Schedule the notes defining “ADV” and additional notes describing the ADV calculation methodologies and criteria for determining whether a Member satisfies the requirements to qualify for any of the rebate or fee tiers is reasonable, equitable, and non-discriminatory because these notes and definitions are designed to ensure that the Fee Schedule is as clear and easily understandable as possible with respect to the requirements of the proposed rebate or fee tiers.

Additionally, the Exchange believes that excluding system disruption days and days with a scheduled early close when calculating ADV is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Displayed Liquidity Adding Rebate Tier 2 (or to avoid being subject to Displayed Liquidity Removing Fee Tier 1) but for the system disruption or scheduled early close. As discussed in the Purpose section, the exclusion of certain trading days from the ADV calculation is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, including calculations of ADV for rebate tiers specifically. And as noted in the Purpose section, these exclusions are consistent with how other exchanges calculate ADV for rebate/fee tier purposes, and thus the Exchange does not believe that this aspect of the proposal

raises any new or novel issues not already considered by the Commission.

Further, the Exchange believes that excluding routed shares that execute away from the Exchange, is reasonable, equitable, and non-discriminatory because, as explained above, these orders do not execute on IEX. And, as noted above, excluding routed executions on other exchanges from the ADV calculation is consistent with the practice of other exchanges, and thus the Exchange does not believe that this aspect of the proposal raises any new or novel issues not already considered by the Commission.

Similarly, the Exchange believes that excluding shares that execute in an auction or the opening process from the ADV calculation is reasonable, equitable, and non-discriminatory because, as explained above, these executions are not eligible for rebates and the adding and removing liquidity concepts are not applicable to the auction or opening processes.

As described above, the proposed additional language in the Fee Schedule permitting aggregation of trades among affiliated Members for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure. Moreover, as noted above, this proposed policy is consistent with the practice of the Exchange and other exchanges with respect to the aggregation of affiliated Members'

volumes for purposes of determining ADV with respect to pricing tiers, and therefore, it does not raise any new or novel issues that have not previously been considered by the Commission.

As discussed above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Within that context, the proposed Displayed Liquidity Adding Rebate Tier structure is designed to keep IEX's displayed trading prices competitive with those of other exchanges. The proposed rebate for the new Displayed Liquidity Adding Rebate Tier 2 (as well as the current rebate that will be applicable to Tier 1) are within the range offered by competing exchanges, and thus IEX does not believe that the proposal raises any new or novel issues not already considered by the Commission in the context of other exchanges' fees.

The Exchange further believes that the proposed rebate tiers are consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees that is also not unfairly discriminatory, because the proposed rebate tiers will apply based on a Member's average daily volume (with no regard to the percentage of total market volume reflected by their trades) in an equal and nondiscriminatory manner to all Members, and all Members are eligible to qualify for any of the proposed rebate tiers.

Furthermore, as discussed in the Purpose section, the Exchange believes it is reasonable to adopt the proposed Displayed Liquidity Removing Fee Tiers, including the proposed higher displayed liquidity removing fee associated with Fee Tier 1 applied to Members that do not trade a minimum amount of Added Displayed Liquidity volume on the Exchange. In particular, the proposed fee tiers are designed to incentivize IEX

Members to enter increased displayed liquidity adding orders on the Exchange in order to avoid the proposed higher fee tier. The Exchange believes that the proposed fee tiers are equitable and not unfairly discriminatory because they would apply to all similarly situated Members and because any Member may avoid imposition of the higher fees applied in Fee Tier 1 by adding the requisite level of displayed liquidity to the Exchange during a month. As noted above, the proposed Displayed Liquidity Removing Fee Tiers are within the range charged by competing exchanges, and thus IEX believes they do not raise any new or novel issues not already considered by the Commission in the context of other exchanges' fees. Additionally, the Exchange believes that the proposed fee tiers are reasonable because they are designed to incentivize Members to maintain a meaningful level of liquidity-adding activity on the Exchange.

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 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.²⁶

Finally, to the extent this proposed fee 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 as well as market quality and execution opportunities. And, as discussed above, IEX does not believe that any aspect of this proposal raises new or novel issues not already considered by the Commission.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition between Members or competing venues. Moreover, as noted in the Statutory Basis section, the Exchange does not believe that the proposed changes raise any new or novel issues not already considered by the Commission.

The Exchange does not believe that the proposed rule change will impose any

²⁶ See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR-IEX-2019-05).

burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different rebates and fees are assessed on Members, these rebate and fee tiers are not based on the type of Member entering the orders that match, but rather on the Member's own trading activity. Further, the proposed fee changes continue to be intended to encourage market participants to bring increased order flow to the Exchange, which benefits all market participants.

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,²⁷ 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 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

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

approved or disapproved.²⁸

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.

²⁸ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 - ; File No. SR-IEX-2024-13)

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

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

Pursuant to the provisions of Section 19(b)(1) under the Act⁴, and Rule 19b-4 thereunder⁵, the Exchange is filing with the Commission a proposed rule change to amend the Exchange’s fee schedule applicable to Members⁶ (the “Fee Schedule”⁷)

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 See Investors Exchange Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

pursuant to IEX Rule 15.110(a) and (c). Changes to the Fee Schedule pursuant to this proposal are effective upon filing⁸, and will be operative on August 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 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 introduce two different tier-based volume-based pricing structures designed to improve market quality on the Exchange by incentivizing Members to send more displayed liquidity adding orders to the Exchange. The first tier-based structure will provide for an enhanced rebate for executions of displayed liquidity adding orders priced at or above \$1.00 per share applicable to Members that meet certain liquidity adding requirements specified below. The second tier-based structure will provide for a higher

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

fee for displayed liquidity removing orders priced at or above \$1.00 per share applicable to Members that do not trade a minimum amount of displayed liquidity adding volume as specified below.

Displayed Liquidity Adding Rebate Tiers

The Exchange proposes to introduce a tiered pricing structure applicable to the rebates provided for executions of displayed liquidity adding orders⁹ priced at or above \$1.00 per share (“Added Displayed Liquidity”).¹⁰ Specifically, the Exchange proposes to revise its Fee Schedule to set forth two volume-based rebate tiers: Tier 1 and Tier 2 (referred to in the Fee Schedule as the “Displayed Liquidity Adding Rebate Tiers”).

As proposed, Tier 1 will provide the Exchange’s current base rebate of \$0.0014 per share to all Added Displayed Liquidity for Members that add less than 10,000,000 ADV¹¹ of Added Displayed Liquidity. And Tier 2 will provide a rebate of \$0.0020 per share to all Added Displayed Liquidity for Members that add at least 10,000,000 ADV of Added Displayed Liquidity (a rebate of \$0.0006 more per share than the rebate provided currently and pursuant to Tier 1). IEX notes that this model of offering volume-based rebates is consistent with the rebates offered by competitor exchanges.¹² The Exchange also notes that the new proposed rebate for Tier 2 (as well as the current rebate that will

⁹ This higher rebate would apply to any orders assigned Fee Code Combinations ML, MLB, MLY, and MLYB.

¹⁰ Nothing in this rule filing affects trades below \$1.00 per share (“sub-dollar trades”). Sub-dollar trades would not impact the rebate tier calculations and remain ineligible for rebates.

¹¹ As proposed, IEX will introduce the following definition of ADV: “ADV” means average daily volume calculated as the number of shares added or removed that execute at or above \$1.00 per share, combined, per day. ADV is calculated on a monthly basis.

¹² See, e.g., MEMX Equities Fee Schedule (Effective July 16, 2024), available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/>. However, IEX’s proposed Tier 2 would be based on each Member’s ADV, without a requirement to meet a total consolidated volume threshold.

be applicable to Tier 1) is lower than the highest rebates offered by competing exchanges.¹³

Accordingly, IEX proposes to update its Fee Schedule to make several revisions to reflect the proposed rebate tiers. First, the Exchange proposes to amend the Base Rates table to update the description and fees associated with Base Fee Code ML (“Add displayed liquidity”). As amended, the Base Rates table will list two base rates for Fee Code ML – the \$0.0014 rebate applied if “Member adds less than 10,000,000 ADV of displayed liquidity” and the higher \$0.0020 rebate applied if “Member adds at least 10,000,000 ADV of displayed liquidity.”

IEX also proposes to add Footnote 4 to the Transaction Fees section, which will be applicable to fee code ML in the Base Rates table, and to Fee Code Combinations ML, MLB, MLY, and MLYB in the Fee Code Combination and Associated Fees table. As proposed, Footnote 4 is titled “Displayed Liquidity Adding Rebate Tiers (Applicable to Executions at or above \$1)” and followed by a table describing Tier 1 and Tier 2, including the required criteria for each rebate tier and the applicable rebate, as described above.

The new rebate tiers are based on each Member’s ADV, which is not currently defined in IEX’s Fee Schedule. Therefore, IEX also proposes to update the list of “Definitions” in the Transaction Fees section of the Fee Schedule by renaming it “Definitions and Information”, and adding a definition of ADV and relevant information

¹³ See, e.g., MEMX Equities Fee Schedule, *supra* note 12 (maximum rebate of \$0.0037); Nasdaq Equity VII, Section 114 (maximum rebate of \$0.0036); New York Stock Exchange Price List 2024 (as of June 3, 2024), https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf (maximum rebate of \$0.0035).

thereof to the list:

- “ADV” means average daily volume calculated as the number of shares added or removed (as applicable) that execute at or above \$1.00 per share, combined, per day. ADV is calculated on a monthly basis.
 - The Exchange excludes from its calculations of ADV any trading day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours and any day with a scheduled early market close.
 - Routed shares executed away from IEX are not included in ADV calculation.
 - Auction and Opening Process executed shares are not included in ADV calculation.
 - With prior notice to the Exchange, a Member may aggregate ADV with other Members with which the Member is affiliated pursuant to Rule 12b-2 under the Act.

In calculating a Member’s ADV, the numerator will be the share volume of applicable transactions (i.e., adding, removing, displayed, non-displayed, as applicable) during the month and the denominator will be the total number of eligible trading days in the month.

As noted above, when calculating ADV, the Exchange will exclude days with system disruptions that last for more than 60 minutes and days with scheduled early closes when determining the numerator and the denominator. An Exchange system disruption may occur, for example, where a certain group of securities traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange’s entire system was operational. The Exchange believes that these types of Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on

such days, and thus, the Exchange believes it is appropriate to exclude such days when determining a Member's ADV to avoid penalizing Members that might otherwise have met the ADV requirements for the higher rebate provided for in Tier 2. For similar reasons, the Exchange believes it is appropriate to exclude trading days with scheduled early closes, because the shorter trading days are likely to result in a lower monthly average daily trading volume for each Member. The Exchange notes that excluding system disruption days and trading days with scheduled early closes is consistent with the methodologies used by other exchanges when calculating each member's ADV.¹⁴

The Exchange will exclude routed shares that executed away from the Exchange from its ADV calculations because, by definition, these are not trades that added displayed liquidity to the Exchange.¹⁵ The Exchange notes that excluding routed shares from the calculation of ADV is also consistent with the practice of other exchanges when calculating ADV.¹⁶ And the Exchange will exclude executions in the opening process for non-listed securities from its ADV calculations, because they are not eligible for any rebates and the adding and removing liquidity concepts are not applicable to the opening process.¹⁷

The Exchange will allow Members to aggregate their ADV with other Members with which they are affiliated¹⁸, if Members provide prior notice to the Exchange. As

¹⁴ See, e.g., MEMX Equities Fee Schedule, *supra* note 12.

¹⁵ IEX also notes that it only charges Members a nominal fee of \$0.0001 on top of the away market's transaction fee for each routable share that executes away from the Exchange.

¹⁶ See, e.g., MEMX Equities Fee Schedule, *supra* note 12.

¹⁷ Similarly, in the event that the Exchange were to have auctions, such transactions would also be excluded.

¹⁸ As defined in Rule 12b-2 under the Act, 17 CFR 240.12b-2.

proposed, to the extent that two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange would permit such Members to aggregate their ADV. Members will be responsible for having proper internal documentation in their books and records substantiating that the two or more Members seeking to aggregate their ADV are affiliates of one another. IEX notes that this grouping of Member affiliates is consistent with how IEX allows Member affiliates to apply IEX's optional anti-internalization functionality across affiliates¹⁹, and is already a common practice for exchanges that offer tiered rebates, in order to not penalize two affiliated members when calculating rebate tiers.²⁰

As noted above, the Exchange is not proposing to change the fees applicable to executions of and with orders with an execution price below \$1.00 per share, which would remain free for such orders that provide displayed liquidity and subject to a fee of 0.09% of the total dollar volume of the execution for orders that take displayed liquidity. IEX is also not proposing to make any changes to the fees applicable to the execution of Retail²¹ orders that remove displayed liquidity, which will continue to execute for free.

The Exchange believes the proposed Displayed Liquidity Adding Rebate Tier structure would provide an incremental incentive for Members to send more orders to the Exchange in an effort to qualify for the proposed enhanced rebate offered by Tier 2 for executions of Added Displayed Volume. As such, the proposed Displayed Liquidity

¹⁹ See IEX Rule 11.190(e)(1)(B).

²⁰ See, e.g., the Nasdaq Stock Market LLC Equity 7, Section 127 ("Aggregation of Activity of Affiliated Members").

²¹ See IEX Rule 11.190(b)(15).

Adding Rebate Tiers are designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue.

Displayed Liquidity Removing Fee Tiers:

The Exchange also proposes to introduce a tiered pricing structure applicable to the fees charged for executions of displayed liquidity removing orders priced at or above \$1.00 per share. Specifically, the Exchange proposes to revise its Fee Schedule to set forth two volume-based fee tiers: Tier 1 and Tier 2 (referred to in the Fee Schedule as the “Displayed Liquidity Removing Fee Tiers”).

As proposed, Tier 1 will apply a new \$0.0030 per share fee to all displayed liquidity removing orders for Members that add less than 25,000 ADV of Added Displayed Liquidity. And Tier 2 will apply the Exchange’s current base displayed liquidity removing fee of \$0.0020 per share to all displayed liquidity removing orders for Members that add at least 25,000 ADV of Added Displayed Liquidity.²²

Accordingly, IEX proposes to update its Fee Schedule to amend the Base Rates table to update the description and fees associated with Base Fee Code TL (“Remove displayed liquidity”). As amended, the Base Rates table will list two base rates for Fee Code TL – the current \$0.0020 fee applied if a “Member adds at least 25,000 ADV of displayed liquidity”, and the new \$0.0030 fee applied if a “Member adds less than 25,000 ADV of displayed liquidity.”

²² For purposes of determining a Member’s Displayed Liquidity Removing Fee Tier, the Exchange will conduct the same ADV calculation described above.

IEX also proposes to add Footnote 5 to the Transaction Fees section, which will be applicable to fee code TL in the Base Rates table, and to fee code combinations TL, TLB, TLY, TLYB, TLW, and TLWB in the Fee Code Combination and Associated Fees table. As proposed, Footnote 5 is titled “Displayed Liquidity Removing Fee Tiers (Applicable to Executions at or above \$1)” and followed by a table describing Tier 1 and Tier 2, including the required criteria for each tier and the applicable fee, as described above.

The Exchange believes it is reasonable to charge its members an increased fee for removing displayed liquidity from the Exchange if they do not trade a minimum amount of Added Displayed Liquidity volume on the Exchange. The proposed higher displayed liquidity removing fee in Tier 1 is designed to incentivize Members to maintain a minimum level of displayed adding activity on the Exchange. The Exchange notes this fee is consistent with other “maker-taker” exchanges that charge higher fees of members to remove liquidity if the members do not qualify for any volume tiers.²³ Similarly, some “taker-maker” exchanges charge liquidity removal fees of Members that do not maintain a meaningful level of liquidity adding activity. For example, Nasdaq BX charges \$0.0007 per share for all liquidity removing orders if the member does not add at least 50,000 ADV (by contrast, members that add at least 50,000 ADV qualify for at least a

²³ See, e.g., New York Stock Exchange Price List 2024 (as of June 3, 2024), supra note 13 (charging \$0.0030 per share for liquidity removing orders, but charging between \$0.00285 and \$0.00295 for the same orders if the member adds between 0.05% and 1.05% ADV of the Consolidated Average Daily Volume); see also MEMX Equities Fee Schedule, supra note 12 (charging \$0.0030 per share for liquidity removing orders, but charging \$0.00295 for the same orders if the member’s ADV qualifies it for MEMX’s Liquidity Removal Tier by having an ADV greater than or equal to 0.70% of the Total Consolidated Volume, including at least .35% of the Total Consolidated Volume remove ADV).

\$0.0005 per share rebate).²⁴ The Exchange periodically assesses its fee structure and based upon a recent assessment, the Exchange believes that these proposed pricing changes would further incentivize Members to submit displayed orders in securities priced at or above \$1.00 per share. The proposed fee changes are designed to incentivize posting displayed liquidity on IEX in securities priced at or above \$1.00 per share in order to address competitive factors (as discussed more thoroughly in the Statutory Basis section) and facilitate price discovery and price formation, which the Exchange believes benefits all Members and market participants.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²⁵ of the Act in general, and furthers the objectives of Sections 6(b)(4)²⁶ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. IEX has concluded that, in the context of current regulatory requirements governing access fees and rebates, it will be able to more effectively compete with other exchanges for order flow by offering higher rebate

²⁴ See Nasdaq BX Equity VII, Section 118.

²⁵ 15 U.S.C. 78f.

²⁶ 15 U.S.C. 78f(b)(4).

incentives. Based upon informal discussions with market participants, IEX believes that Members and other market participants may be more willing to send displayed orders to IEX if the proposed fee structure was adopted.

Accordingly, IEX has designed the proposed access fee and rebate tiers to attract and incentivize displayed orders as well as order flow seeking to trade with such displayed orders. Moreover, increases in displayed liquidity 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 NMS²⁷ 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 substantially reducing the access fee cap for all NMS stocks, a step that is 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.²⁸ 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.

²⁷ 17 CFR 242.610.

²⁸ 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>.

Thus, as discussed in the Purpose section, the Exchange believes that the proposed adoption of a volume-based rebate tier that provides higher rebates for Members that provide a relatively higher ADV of displayed liquidity is reasonable and consistent with the Act because it is designed to incentivize Members to add additional displayed orders on IEX. Specifically, the Exchange believes that the volume-based rebate tiers are reasonably designed to incentivize Members to add a meaningful volume of displayed liquidity by providing a \$0.0006 higher rebate for Members that qualify for Tier 2 than it provides to Members that qualify for Tier 1. As noted in the Purpose section, other exchanges offer rebate tiers, and thus the Exchange does not believe that this aspect of the proposal raises any new or novel issues not already considered by the Commission.

The Exchange also believes that adding to the Fee Schedule the notes defining “ADV” and additional notes describing the ADV calculation methodologies and criteria for determining whether a Member satisfies the requirements to qualify for any of the rebate or fee tiers is reasonable, equitable, and non-discriminatory because these notes and definitions are designed to ensure that the Fee Schedule is as clear and easily understandable as possible with respect to the requirements of the proposed rebate or fee tiers.

Additionally, the Exchange believes that excluding system disruption days and days with a scheduled early close when calculating ADV is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Displayed Liquidity Adding Rebate Tier 2 (or to avoid being subject to

Displayed Liquidity Removing Fee Tier 1) but for the system disruption or scheduled early close. As discussed in the Purpose section, the exclusion of certain trading days from the ADV calculation is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, including calculations of ADV for rebate tiers specifically. And as noted in the Purpose section, these exclusions are consistent with how other exchanges calculate ADV for rebate/fee tier purposes, and thus the Exchange does not believe that this aspect of the proposal raises any new or novel issues not already considered by the Commission.

Further, the Exchange believes that excluding routed shares that execute away from the Exchange, is reasonable, equitable, and non-discriminatory because, as explained above, these orders do not execute on IEX. And, as noted above, excluding routed executions on other exchanges from the ADV calculation is consistent with the practice of other exchanges, and thus the Exchange does not believe that this aspect of the proposal raises any new or novel issues not already considered by the Commission.

Similarly, the Exchange believes that excluding shares that execute in an auction or the opening process from the ADV calculation is reasonable, equitable, and non-discriminatory because, as explained above, these executions are not eligible for rebates and the adding and removing liquidity concepts are not applicable to the auction or opening processes.

As described above, the proposed additional language in the Fee Schedule permitting aggregation of trades among affiliated Members for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their

various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure. Moreover, as noted above, this proposed policy is consistent with the practice of the Exchange and other exchanges with respect to the aggregation of affiliated Members' volumes for purposes of determining ADV with respect to pricing tiers, and therefore, it does not raise any new or novel issues that have not previously been considered by the Commission.

As discussed above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Within that context, the proposed Displayed Liquidity Adding Rebate Tier structure is designed to keep IEX's displayed trading prices competitive with those of other exchanges. The proposed rebate for the new Displayed Liquidity Adding Rebate Tier 2 (as well as the current rebate that will be applicable to Tier 1) are within the range offered by competing exchanges, and thus IEX does not believe that the proposal raises any new or novel issues not already considered by the Commission in the context of other exchanges' fees.

The Exchange further believes that the proposed rebate tiers are consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees that is also not unfairly discriminatory, because the proposed rebate tiers will apply based on a

Member's average daily volume (with no regard to the percentage of total market volume reflected by their trades) in an equal and nondiscriminatory manner to all Members, and all Members are eligible to qualify for any of the proposed rebate tiers.

Furthermore, as discussed in the Purpose section, the Exchange believes it is reasonable to adopt the proposed Displayed Liquidity Removing Fee Tiers, including the proposed higher displayed liquidity removing fee associated with Fee Tier 1 applied to Members that do not trade a minimum amount of Added Displayed Liquidity volume on the Exchange. In particular, the proposed fee tiers are designed to incentivize IEX Members to enter increased displayed liquidity adding orders on the Exchange in order to avoid the proposed higher fee tier. The Exchange believes that the proposed fee tiers are equitable and not unfairly discriminatory because they would apply to all similarly situated Members and because any Member may avoid imposition of the higher fees applied in Fee Tier 1 by adding the requisite level of displayed liquidity to the Exchange during a month. As noted above, the proposed Displayed Liquidity Removing Fee Tiers are within the range charged by competing exchanges, and thus IEX believes they do not raise any new or novel issues not already considered by the Commission in the context of other exchanges' fees. Additionally, the Exchange believes that the proposed fee tiers are reasonable because they are designed to incentivize Members to maintain a meaningful level of liquidity-adding activity on the Exchange.

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 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.²⁹

Finally, to the extent this proposed fee 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 as well as market quality and execution opportunities. And, as discussed above, IEX does not believe that any aspect of this proposal raises new or novel issues not already considered by the Commission.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which

²⁹ See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769, 41771 (August 15, 2019) (SR-IEX-2019-05).

market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition between Members or competing venues. Moreover, as noted in the Statutory Basis section, the Exchange does not believe that the proposed changes raise any new or novel issues not already considered by the Commission.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different rebates and fees are assessed on Members, these rebate and fee tiers are not based on the type of Member entering the orders that match, but rather on the Member's own trading activity. Further, the proposed fee changes continue to be intended 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).³⁰ 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

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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)³¹ 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-2024-13 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-2024-13. 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

³¹ 15 U.S.C. 78s(b)(2)(B).

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-2024-13 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.³²

Sherry R. Haywood,

Assistant Secretary.

³² 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 [June 12, 2024]August 1, 2024

Transaction Fees

- All fees identify cost or rebate per share executed unless otherwise specified. Rebates are indicated by parentheses ().
- Footnotes provide further explanatory text or indicate variable rate changes, provided the conditions in the footnote are met.
- The rates listed in the Base Rates table apply unless a Member's transaction is assigned a Fee Code other than a Base Fee Code (an "Additional Fee Code"). If a Member's transaction is assigned an Additional Fee Code, the rates listed in the Fee Code Combinations and Associated Fees table will apply.
- The Exchange passes-through in full any fees charged by/rebates received from away venues ("Cost") to the Member and adds the IEX fee (i.e., a \$0.0001 charge per share).

Definitions and Information

- "Fee Code" is identified on each execution report message from the Exchange in the Trade Liquidity Indicator (FIX tag 9730) field.
- "MPID" means a market participant identifier.
- "TDV" means the total dollar value of the execution calculated as the execution price multiplied by the number of shares executed in the transaction.
- "ADV" means average daily volume calculated as the number of shares added or removed (as applicable) that execute at or above \$1.00 per share, per day. ADV is calculated on a monthly basis.
 - The Exchange excludes from its calculations of ADV any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours and any day with a scheduled early market close.
 - Routed shares executed away from IEX are not included in ADV calculation.
 - Auction and Opening Process executed shares are not included in ADV calculation.
 - With prior notice to the Exchange, a Member may aggregate ADV with other Members with which the Member is affiliated pursuant to Rule 12b-2 under the Act.

Base Rates:

Base Fee Codes	Description	Executions at or above \$1.00	Executions below \$1.00
MI	Add non-displayed liquidity	\$0.0010	0.10% of TDV
ML ⁴	Add displayed liquidity (Member adds less than 10,000,000 ADV of displayed liquidity) (Member adds at least 10,000,000 ADV of displayed liquidity)	(\$0.0014) (\$0.0020)	FREE
TI	Remove non-displayed liquidity	\$0.0010	0.10% of TDV
TL ⁵	Remove displayed liquidity (Member adds at least 25,000 ADV of displayed liquidity) (Member adds less than 25,000 ADV of displayed liquidity)	\$0.0020 \$0.0030	0.09% of TDV
X	Opening Process for Non-Listed Securities (“Opening Process”)	\$0.0010	0.10% of TDV
O, C, H, P	Auction Match Fee	\$0.0003	0.30% of TDV
Alpha	Routing and removing liquidity (all routing options)	Cost + \$0.0001	

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 ¹	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 ²	Tape B security	See Relevant Fee Code Combinations Below
K	Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity	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
MI	Adds non-displayed liquidity	\$0.0010	0.10% of TDV
MIB ²	Adds non-displayed liquidity (Tape B)	\$0.0010	0.10% of TDV
ML ⁴	Adds displayed liquidity	(\$0.0014)	FREE
MLB ²⁴	Adds displayed liquidity (Tape B)	(\$0.0014)	FREE
MLY ⁴	Post Only order adds liquidity against resting non-displayed order	(\$0.0014)	N/A
MLYB ²⁴	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 ²	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 ²	Post Only order removes non-displayed liquidity (Tape B)	\$0.0010	N/A
TL ⁵	Removes displayed liquidity	\$0.0020	0.09% of TDV
TLB ²⁵	Removes displayed liquidity (Tape B)	\$0.0020	0.09% of TDV
TLK ³	Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity	\$0.0010	0.09% of TDV
TLBK ²³	Discretionary Peg, Fixed Midpoint Peg, Midpoint Peg, or Primary Peg order removes displayed liquidity (Tape B)	\$0.0010	0.09% of TDV
TLY ⁵	Post Only order removes displayed liquidity	\$0.0020	N/A
TLYB ²⁵	Post Only order removes displayed liquidity (Tape B)	\$0.0020	N/A
TIR ¹	Retail order removes non-displayed liquidity	FREE	FREE

TLW ²	Resting non-displayed order removes liquidity against incoming Post Only order	\$0.0020	N/A
TLWB ^{2,5}	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 ¹	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

¹ **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.

² **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.

³ 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 Combination TLWB and TLW, respectively.

⁴ **Displayed Liquidity Adding Rebate Tiers (Applicable to Executions at or above \$1):**

Tier	Required Criteria	Fee
<u>Tier 1</u>	<u>Member adds less than 10,000,000 ADV of displayed liquidity</u>	<u>(\$0.0014)</u>
<u>Tier 2</u>	<u>Member adds at least 10,000,000 ADV of displayed liquidity</u>	<u>(\$0.0020)</u>

5 Displayed Liquidity Removing Fee Tiers (Applicable to Executions at or above \$1):

Tier	Required Criteria	Fee
<u>Tier 1</u>	<u>Member adds less than 25,000 ADV of displayed liquidity</u>	<u>\$0.0030</u>
<u>Tier 2</u>	<u>Member adds at least 25,000 ADV of displayed liquidity</u>	<u>\$0.0020</u>
