

Required fields are shown with yellow backgrounds and asterisks.

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"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

Proposed rule change to amend Rule 11.350 to clarify when a new IEX-listed security will be eligible to begin trading with an IPO auction.

**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 Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 04/17/2018  
 By Claudia Crowley  
 (Name \*)

Chief Regulatory Officer

claudia.crowley@iextrading.com

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 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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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 Rules 11.350(e) and (a) to clarify that a new IEX-listed security that is not the subject of an initial public offering (“IPO”)<sup>3</sup> or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session<sup>4</sup> and have an Opening Auction<sup>5</sup> on IEX at the start of Regular Market Hours,<sup>6</sup> rather than an IPO Auction,<sup>7</sup> and to make corresponding changes to certain definitions governing IPO and Opening Auctions. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>8</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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

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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> The term IPO refers to the initial public offering of securities registered under Section 6 of the Securities Act of 1933.

<sup>4</sup> See Rule 1.160(z).

<sup>5</sup> See Rule 11.350(c).

<sup>6</sup> See Rule 1.160(gg).

<sup>7</sup> See Rule 11.350(e).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4.

the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule changes 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.

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

Andres J. Trujillo  
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

Overview

On August 4, 2017, the Commission approved a proposed rule change filed by the Exchange to adopt rules governing auctions in IEX-listed securities ("IEX Auctions"), including provisions governing the initial public offering ("IPO") of IEX-listed securities.<sup>10</sup> The Exchange intends to launch a listings program for corporate issuers in 2018. The purpose of this proposed rule change is to amend paragraphs (e) and (a) of Rule 11.350, and adopt new Supplemental Material .01 and .02 to Rule 11.350(e) to

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<sup>10</sup> See Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017). See also Rule 11.350(e).

clarify that a new IEX-listed security that is not the subject of an initial public offering or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction, and to make corresponding changes to certain definitions governing IPO and Opening Auctions.

Pursuant to Rule 11.350(e), the Exchange will conduct an IPO Auction for securities that are the subject of an initial public offering on the first day of listing.<sup>11</sup> In addition, as proposed, the Exchange will also conduct an IPO Auction on the first day of listing for a new issue that is not an initial public offering, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions that are performed by an underwriter with respect to an initial public offering as specified in Rule 11.280(h)(9) (“specified underwriter functions”).<sup>12</sup> For securities that are not the subject of an initial public offering or other new issues where a broker-dealer is unwilling to perform the specified underwriter functions, the

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<sup>11</sup> Pursuant to section 12(f)(1)(G)(i)-(ii) of the Securities and Exchange Act, a security is the subject of an initial public offering if the offering of the subject security is registered under the Securities Act of 1933, the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of the Act, and the initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered. See 15 U.S.C. 78l(f)(1)(G). See also proposed Supplemental Material .01 to Rule 11.350(e).

<sup>12</sup> Pursuant to Rule 11.280(h)(9), the process for halting and initial pricing of a security that is the subject of an IPO shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an initial public offering. See also proposed Supplemental Material .01 to Rule 11.350(e).

security will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, instead of conducting an IPO Auction on the first day of listing.<sup>13</sup> As an example, if an issuer with a class of common stock listed on IEX offers and lists a class of preferred stock on IEX, the offering of the preferred stock would not constitute an initial public offering and if there is no broker-dealer serving in the role of financial advisor to the issuer of the preferred stock that is willing to perform the specified underwriter functions, the security will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, instead of conducting an IPO Auction on the first day of listing.

The Exchange notes that the proposed rule changes do not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes are designed to simply clarify which of the existing IEX Auction processes will be utilized to begin trading in a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), and to make corresponding changes to certain definitions governing IPO and Opening Auctions.

#### IEX IPO Auction

For trading in an IEX-listed security that is the subject of an IPO, or for the launch of a new issue,<sup>14</sup> the Exchange will conduct an IPO Auction pursuant to Rule

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<sup>13</sup> See proposed Supplemental Material .02 to Rule 11.350(e) and Rule 11.350(c).

<sup>14</sup> The Exchange notes that new issues are registered securities that are being listed on the Exchange and sold publicly for the first time but are not necessarily the subject of an IPO.

11.350(e). Specifically, Users may submit Auction Eligible Orders<sup>15</sup> for execution in the IPO Auction at the start of the Order Acceptance Period,<sup>16</sup> which begins at 8:00 a.m.<sup>17</sup> All Auction Eligible Orders designated for participation in the IPO Auction will be queued on the IPO Auction Book<sup>18</sup> until the scheduled auction match, at which time they will be eligible for execution in the IPO Auction. Pursuant to Rule 11.350(e)(2)(A), the Exchange will begin to disseminate IEX Auction Information via electronic means at the start of the Display Only Period,<sup>19</sup> which begins thirty (30) minutes prior to the scheduled IPO Auction match, and will be updated every one second thereafter.<sup>20</sup> The Exchange will attempt to conduct an IPO Auction for all IEX-listed securities at the scheduled auction match time in accordance with the clearing price determination process set forth in Rule 11.350(e)(2)(C). Auction Eligible Orders will be ranked and maintained in accordance with IEX auction priority, pursuant to Rule 11.350(b).

The Exchange will generally attempt to conduct an IPO Auction beginning at 10:15 a.m. Pursuant to Rule 11.280(g)(7), IEX will declare a regulatory halt before the start of the Pre-Market Session for a security that is the subject of an IPO on IEX, and therefore there will be no Continuous Book for such security. The Order Acceptance Period for an IPO Auction may be extended at the time of the auction match pursuant to Rules 11.350(e)(2)(B)(i)-(iv):

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<sup>15</sup> See Rule 11.350(a)(2).

<sup>16</sup> See Rule 11.350(a)(29).

<sup>17</sup> All times are in Eastern Time.

<sup>18</sup> See Rule 11.350(a)(1)(C). For an IPO Auction, the IPO Auction Book would include Market-On-Open, Limit-On-Open, and market orders with a time-in-force of DAY, as well as limit orders with a time in-force of DAY, GTX, GTT, SYS, FOK, or IOC.

<sup>19</sup> See Rule 11.350(a)(5).

<sup>20</sup> See Rule 11.350(a)(9).

- Automatically for five (5) minutes when there are unmatched shares from market orders on the IPO Auction Book;
- Automatically for five (5) minutes when the Indicative Clearing Price<sup>21</sup> at the time of the IPO Auction match differs by the greater of five percent (5%) or fifty cents (\$0.50) from any of the previous fifteen (15) Indicative Clearing Price disseminations;
- Automatically during the Pre-Launch Period<sup>22</sup> when the IPO Auction match price is above (below) the upper (lower) price band selected by the underwriter pursuant to proposed Rule 11.280(h)(8), until the clearing price is within such bands; or
- Manually upon request from the underwriter at any time prior to the auction match.

Furthermore, Rule 11.280(h)(8) governs the process for resuming from a trading halt initiated under Rule 11.280(g)(7) for a security that is the subject of an IPO. Thus, in addition to the systemic processes described above that govern the IPO Auction match, there is a series of procedural steps to complete an IPO Auction, which include input from and coordination with the IPO underwriter. Specifically, pursuant to Rule 11.280(h), thirty (30) minutes after the start of the Display Only Period, unless extended by the underwriter, the security will enter a Pre-Launch Period of indeterminate duration. The Pre-Launch Period will end immediately after the transition to the Regular Market Session following the IPO Auction match,<sup>23</sup> pending:

- Notification from the underwriter that the security is ready to trade;
- Subsequent approval of the Indicative Clearing Price at the time of such notification; and
- Validation that each of the conditions for the extension of the Order Acceptance Period set forth in Rules 11.350(e)(2)(B)(i)-(iv) are not satisfied.

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<sup>21</sup> See Rule 11.350(a)(9)(E).

<sup>22</sup> See Rule 11.280(h)(8).

<sup>23</sup> See Rule 11.350(e)(3).

Lastly, pursuant to Rule 11.280(h)(9), the process for halting and initial pricing of a security that is the subject of an IPO shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an IPO.

#### IEX Opening Auction

Pursuant to Rule 11.350(c)(1), Users may submit orders eligible for execution in the Opening Auction<sup>24</sup> at the beginning of the Pre-Market Session, which begins at 8:00 a.m. Any orders designated for the Opening Auction Book<sup>25</sup> will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. In addition to orders on the Opening Auction Book, limit orders on the Continuous Book with a time-in-force of SYS or GTT are eligible to execute in the Opening Auction (“Pre-market Continuous Book”).<sup>26</sup> The Exchange does not place any restrictions on the entry of orders to the Pre-market Continuous Book to avoid unnecessary disruptions to continuous trading.

Pursuant to proposed Rule 11.350(c)(2), beginning at the Opening Auction Lock-in Time<sup>27</sup> and updated every one second thereafter, the Exchange will disseminate IEX

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<sup>24</sup> See Rule 11.350(c).

<sup>25</sup> Pursuant to Rule 11.350(a)(1)(A), orders on the Opening Auction Book would include MOO orders, LOO orders, market orders with a time-in-force of DAY, and limit orders with a time-in-force of DAY or GTX.

<sup>26</sup> See Rule 11.190(a)(1)(E)(iv) and (vi).

<sup>27</sup> See Rule 11.350(a)(22).

Auction Information via electronic means. The Exchange will attempt to conduct an Opening Auction for all IEX-listed securities at the start of Regular Market Hours (i.e., 9:30 a.m.) in accordance with the clearing price determination process set forth in Rule 11.350(c)(2)(B). All orders eligible for execution in the Opening Auction (i.e., orders on the Opening Auction Book and orders on the Pre-Market Continuous Book that are not Auction Ineligible Orders)<sup>28</sup> are Auction Eligible Orders. Auction Eligible Orders will be ranked and maintained in accordance with IEX auction priority, pursuant to Rule 11.350(b). Moreover, pursuant to Rule 11.350(a)(2), non-displayed buy (sell) orders on the Pre-Market Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range<sup>29</sup> will be priced at the lower (upper) threshold of the Reference Price Range for the purpose of determining the clearing price,<sup>30</sup> but will be ranked and eligible for execution in the Opening Auction match at the order's resting price.<sup>31</sup>

#### Proposed Changes

The Exchange proposes to clarify that a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) (i.e., a financial advisor to the issuer is willing to perform the specified underwriter functions for

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<sup>28</sup> See Rule 11.350(a)(3).

<sup>29</sup> See Rule 11.350(a)(30).

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

<sup>31</sup> The Exchange notes that in the case of an IPO, Halt, or Volatility Auction, there is no continuous trading and therefore no Continuous Book. Accordingly, there would be no non-displayed interest on the Continuous Book to which this functionality would apply.

a security that was not listed on a national securities exchange or traded pursuant to FINRA form 211 immediately prior to the initial pricing) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction. As described above, current Exchange Rule 11.350(e) states in relevant part that an IPO Auction will be utilized for the launch of a new issue. However, pursuant to Rule 11.280(g)(7), IEX may only issue a regulatory halt before the start of the Pre-Market Session for a security that is the subject of an IPO on IEX, or pursuant to Rule 11.280(h)(9).

Therefore, the IPO Auction process, which pre-supposes there is no trading in the security prior to the IPO Auction match, would be suboptimal for the launch of a new issue that is not an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), because the Exchange does not have authority to initiate a regulatory trading halt, and thus such securities would be eligible for trading during the Pre-Market Session. The IPO Auction process is designed to aggregate all existing liquidity in a security and execute the maximum number of shares at a price that accurately reflects supply and demand. The IPO Auction is not designed to account for continuous trading, and thus running an IPO Auction alongside continuous trading could result in auction pricing that does not account for all available interest in, or reflect the current market for, the security. Accordingly, the Exchange is proposing to clarify that an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction.

Lastly, the Exchange proposes to make corresponding changes to Rules

11.350(a)(6) and (7), which define the terms “Final Consolidated Last Sale Eligible Trade”,<sup>32</sup> and “Final Last Sale Eligible Trade”,<sup>33</sup> respectively. Specifically, the Exchange proposes to add a new subparagraph (i) to paragraph (A) of Rules 11.350(a)(6) and (7) to specify that if there is no qualifying previous official closing price for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), the Final Consolidated Last Sale Eligible Trade and the Final Last Sale Eligible Trade will be equal to issue price. Furthermore, the Exchange proposes to amend subparagraph (B) of Rules 11.350(a)(6) and (7) to replace the broad language referencing “the launch of a new issue” with a more specific cross reference to the initial pricing of any other security pursuant to Rule 11.280(h)(9). Thus, as proposed:

- For a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9):
  - The security will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction; and

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<sup>32</sup> Pursuant to Rule 11.350(a)(6), the Final Consolidated Last Sale Eligible Trade is the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape System (“Consolidated Tape”), rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer. If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the previous official closing price; and in the case of an IPO or the initial pricing of any other security pursuant to Rule 11.280(h)(9), the issue price. See also Rules 11.350(a)(30) and (33), as well as Rules 11.350(d)(4)(B)(i) and (ii), which utilize the defined term in a variety of contexts, none of which are significantly impacted by the proposed changes.

<sup>33</sup> Pursuant to Rule 11.350(a)(7), the Final Last Sale Eligible Trade is the last trade on IEX prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape. If there is no qualifying Final Last Sale Eligible Trade for the current day, the previous official closing price; and in the case of an IPO or launch of a new issue, the issue price. See also Rules 11.350(d)(2)(B) and (D); as well as Rule 11.350(f)(3)(B)(ii), which each utilize the defined term in a variety of contexts, none of which are significantly impacted by the proposed changes.

- The Final Consolidated Last Sale Eligible Trade will be equal to the last trade prior to the end of Regular Market Hours, rounded to the nearest Minimum Price Variant (“MPV”) or Midpoint Price calculated by the System, whichever is closer:<sup>34</sup>
  - If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the previous official closing price; or
  - If there is no qualifying previous official closing price for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), the issue price.
- The Final Last Sale Eligible Trade will be equal to the last trade on IEX prior to the end of Regular Market Hours,<sup>35</sup> or if there is no qualifying Final Last Sale Eligible Trade for the current day, the issue price.
- For a security that is the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9):
  - The Exchange will conduct an IPO Auction;
  - The Final Consolidated Last Sale Eligible Trade will be equal to the last trade prior to the end of Regular Market Hours, rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer:<sup>36</sup>
    - If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the issue price.
  - The Final Last Sale Eligible Trade will be equal to the last trade on IEX prior to the end of Regular Market Hours:<sup>37</sup>
    - If there is no qualifying Final Last Sale Eligible Trade for the current day, the issue price.

The Exchange believes the proposed modifications to paragraphs (e) and (a) of Rule 11.350 and the addition of Supplemental Material .01 and .02 to Rule 11.350(e) are designed to avoid any potential confusion regarding which of the IEX Auctions will be utilized to process an IEX-listed security that is not the subject of an IPO or otherwise

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<sup>34</sup> However, where applicable, it will be the last trade prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape, rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer. See Rule 11.210 specifying the MPV and Rule 1.160(t) defining Midpoint Price.

<sup>35</sup> However, where applicable, it will be the last trade prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape.

<sup>36</sup> See supra note 34.

<sup>37</sup> See supra note 35.

being priced pursuant to Rule 11.280(h)(9), and therefore further clarifies the Exchange's auction processing. In addition, as announced in IEX Trading Alerts [#2017-015](#) and [#2017-046](#), the Exchange intends to become a primary listing exchange and support its first IEX-listed security in 2018.<sup>38</sup> As part of the listings initiative, the Exchange is providing a series of industry wide weekend tests for the Exchange and its Members to exercise the various technology changes required to support IEX Auctions and listings functionality.<sup>39</sup> Accordingly, the Exchange is proposing to clarify paragraphs (e) and (a) of Rule 11.350 and add Supplemental Material .01 and .02 to Rule 11.350(e) as described above in advance of the industry wide testing period in 2018 in order to avoid potential confusion, and allow Members and other market participants time to develop, test, and deploy any necessary changes to support IEX Auctions.

b. Statutory Basis

IEX believes that the proposed rule changes are consistent with the provisions of Section 6(b)<sup>40</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the

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<sup>38</sup> See [IEX Trading Alert #2017-015](#) (Listings Specifications, Testing Opportunities, and Timelines), May 31, 2017. See also [IEX Trading Alert #2017-046](#) (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017.

<sup>39</sup> See, e.g., [IEX Trading Alert #2017-028](#) (First Listings Functionality Industry Test on Saturday, August 26), August 17, 2017; [IEX Trading Alert #2017-037](#) (Second Listings Functionality Industry Test on Saturday, September 9), September 7, 2017; [IEX Trading Alert #2017-039](#) (Third Listings Functionality Industry Test on Saturday, September 23), September 18, 2017; [IEX Trading Alert #2017-040](#) (Rescheduled 4<sup>th</sup> Listing Functionality Industry Test), September 29, 2017; [IEX Trading Alert #2017-046](#) (IEX Listings Timeline Update), originally published on Monday, October 30, 2017, and re-published on Tuesday, October 31, 2017; and [IEX Trading Alert #2017-047](#) (Fourth Listings Functionality Industry Test on Saturday, November 4), October 31, 2017.

<sup>40</sup> 15 U.S.C. 78f.

Act<sup>41</sup> in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to paragraphs (e) and (a) of Rule 11.350 and the addition of Supplemental Material .01 and .02 to Rule 11.350(e) are consistent with the protection of investors and the public interest in that they do not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9). In this regard, the Exchange believes that the choice of which auction applies is consistent with the Act because the IPO Auction presupposes that a financial advisor is willing to perform the specified underwriter functions and it would not make sense to use an IPO Auction in the absence of such a financial advisor. Further, the proposed progression of reference prices that will be utilized as the Final Consolidated Last Sale Eligible Trade and the Final Last Sale Eligible Trade for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) is consistent with the protection of investors and the public interest in that such prices most accurately reflect the market for the security and are also consistent with the Exchange's current reference prices.

Furthermore, the Exchange believes the proposed rule changes are consistent with the protection of investors and the public interest because as described above, the IPO

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<sup>41</sup> 15 U.S.C. 78f(b)(5).

Auction is not designed to account for continuous trading, and thus running an IPO

Auction alongside continuous trading could result in auction pricing that does not account for all available interest in, or reflect the current market for, the security. Accordingly, the Exchange proposes to clarify that an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction.

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

IEX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in that the proposed rule changes are consistent with the rules of other primary listing markets.<sup>42</sup> Thus, the Exchange believes there are no new inter-market competitive burdens imposed as a result of the proposed rule changes.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition. Specifically, as discussed above, the proposed clarification does not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9). Furthermore, the Exchange believes the proposed rule change is designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the

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<sup>42</sup> See e.g., the Nasdaq Stock Market, LLC ("Nasdaq") Rules 4753 and 4120(c)(8)-(9).

benefit of all market participants. Lastly, the Exchange notes that the proposed changes will apply to all Members on a fair and equal basis. Accordingly, the Exchange believes there are no new intra-market competitive burdens imposed as a result of the proposed rule changes.

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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>43</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>44</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>45</sup>

The Exchange believes that the proposed rule change meets the criteria of

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<sup>43</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>44</sup> 17 CFR 240.19b-4.

<sup>45</sup> 17 CFR 240.19b-4(f)(6)(iii).

subparagraph (f)(6) of Rule 19b-4<sup>46</sup> because it would not significantly affect the protection of investors or the public interest, and would not impose any significant burden on competition. The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any burden on competition because as discussed above, the proposed changes do not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9). Furthermore, as discussed above, the proposed rule changes are designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the benefit of all market participants. Moreover, the Exchange believes there are no intra-market competitive burdens imposed as a result of the proposed rule changes because, as discussed above, they will apply to all Members on a fair and equal basis.

In addition, the Exchange believes the proposed changes are consistent with the protection of investors and the public interest because as described above, the IPO Auction is not designed to account for continuous trading, and thus running an IPO Auction alongside continuous trading could result in auction pricing that does not account for all available interest in, or reflect the current market for, the security.

Lastly, the Exchange believes the proposed rule changes do not significantly affect the protection of investors or the public interest in that they are designed to avoid

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

any potential confusion regarding IEX Auctions as IEX continues industry-wide testing to exercise the technology changes being made by the Exchange and its Members to support IEX as a listings market, including IEX Auctions.<sup>47</sup> Accordingly, the Exchange believes that the proposed rule changes are noncontroversial and satisfy the requirements of Rule 19b-4(f)(6).<sup>48</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. As discussed above, the Exchange believes that the proposed rule changes are consistent with the protection of investors and the public interest because they do not alter the substantive functionality governing the IPO Auction or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9). Furthermore, as discussed above, the proposed rule change is designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the benefit of all market participants. Moreover, the Exchange believes there are no intra-market competitive burdens imposed as a result of the proposed rule changes because, as discussed above, the proposed rules will apply to all Members on a fair and equal basis. Therefore, the Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest in that the proposed changes do not raise

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<sup>47</sup> See *supra* note 39.

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

any new or novel issues that the Commission has not already considered.

Lastly, the Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because, as discussed above, it is designed to avoid any potential confusion regarding IEX Auctions as IEX continues industry-wide testing to exercise the technology changes being made by the Exchange and its Members to support IEX as a listings market, including IEX Auctions.<sup>49</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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

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<sup>49</sup> See supra note 39.

Exhibit 5 – Text of Proposed Rule Change.

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2018-08)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 11.350 to Clarify When a New IEX-Listed Security Will Be Eligible to Begin Trading with an IPO Auction.

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 Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to amend Rules 11.350(e) and (a) to clarify that a new IEX-listed security that is not the subject of an initial public offering (“IPO”)<sup>6</sup> or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market

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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> The term IPO refers to the initial public offering of securities registered under Section 6 of the Securities Act of 1933.

Session<sup>7</sup> and have an Opening Auction<sup>8</sup> on IEX at the start of Regular Market Hours,<sup>9</sup> rather than an IPO Auction,<sup>10</sup> and to make corresponding changes to certain definitions governing IPO and Opening Auctions. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>11</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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

II. Self-Regulatory Organization’s Statement of the Purpose of, and 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 statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Overview

On August 4, 2017, the Commission approved a proposed rule change filed by the

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<sup>7</sup> See Rule 1.160(z).

<sup>8</sup> See Rule 11.350(c).

<sup>9</sup> See Rule 1.160(gg).

<sup>10</sup> See Rule 11.350(e).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4.

Exchange to adopt rules governing auctions in IEX-listed securities (“IEX Auctions”), including provisions governing the initial public offering (“IPO”) of IEX-listed securities.<sup>13</sup> The Exchange intends to launch a listings program for corporate issuers in 2018. The purpose of this proposed rule change is to amend paragraphs (e) and (a) of Rule 11.350, and adopt new Supplemental Material .01 and .02 to Rule 11.350(e) to clarify that a new IEX-listed security that is not the subject of an initial public offering or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction, and to make corresponding changes to certain definitions governing IPO and Opening Auctions.

Pursuant to Rule 11.350(e), the Exchange will conduct an IPO Auction for securities that are the subject of an initial public offering on the first day of listing.<sup>14</sup> In addition, as proposed, the Exchange will also conduct an IPO Auction on the first day of listing for a new issue that is not an initial public offering, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions that are performed by an underwriter with respect to an initial

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<sup>13</sup> See Securities Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017). See also Rule 11.350(e).

<sup>14</sup> Pursuant to section 12(f)(1)(G)(i)-(ii) of the Securities and Exchange Act, a security is the subject of an initial public offering if the offering of the subject security is registered under the Securities Act of 1933, the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of the Act, and the initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered. See 15 U.S.C. 78l(f)(1)(G). See also proposed Supplemental Material .01 to Rule 11.350(e).

public offering as specified in Rule 11.280(h)(9) (“specified underwriter functions”).<sup>15</sup> For securities that are not the subject of an initial public offering or other new issues where a broker-dealer is unwilling to perform the specified underwriter functions, the security will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, instead of conducting an IPO Auction on the first day of listing.<sup>16</sup> As an example, if an issuer with a class of common stock listed on IEX offers and lists a class of preferred stock on IEX, the offering of the preferred stock would not constitute an initial public offering and if there is no broker-dealer serving in the role of financial advisor to the issuer of the preferred stock that is willing to perform the specified underwriter functions, the security will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, instead of conducting an IPO Auction on the first day of listing.

The Exchange notes that the proposed rule changes do not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes are designed to simply clarify which of the existing IEX Auction processes will be utilized to begin trading in a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), and to make corresponding

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<sup>15</sup> Pursuant to Rule 11.280(h)(9), the process for halting and initial pricing of a security that is the subject of an IPO shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an initial public offering. See also proposed Supplemental Material .01 to Rule 11.350(e).

<sup>16</sup> See proposed Supplemental Material .02 to Rule 11.350(e) and Rule 11.350(c).

changes to certain definitions governing IPO and Opening Auctions.

### IEX IPO Auction

For trading in an IEX-listed security that is the subject of an IPO, or for the launch of a new issue,<sup>17</sup> the Exchange will conduct an IPO Auction pursuant to Rule 11.350(e). Specifically, Users may submit Auction Eligible Orders<sup>18</sup> for execution in the IPO Auction at the start of the Order Acceptance Period,<sup>19</sup> which begins at 8:00 a.m.<sup>20</sup> All Auction Eligible Orders designated for participation in the IPO Auction will be queued on the IPO Auction Book<sup>21</sup> until the scheduled auction match, at which time they will be eligible for execution in the IPO Auction. Pursuant to Rule 11.350(e)(2)(A), the Exchange will begin to disseminate IEX Auction Information via electronic means at the start of the Display Only Period,<sup>22</sup> which begins thirty (30) minutes prior to the scheduled IPO Auction match, and will be updated every one second thereafter.<sup>23</sup> The Exchange will attempt to conduct an IPO Auction for all IEX-listed securities at the scheduled auction match time in accordance with the clearing price determination process set forth in Rule 11.350(e)(2)(C). Auction Eligible Orders will be ranked and maintained in accordance with IEX auction priority, pursuant to Rule 11.350(b).

The Exchange will generally attempt to conduct an IPO Auction beginning at

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<sup>17</sup> The Exchange notes that new issues are registered securities that are being listed on the Exchange and sold publicly for the first time but are not necessarily the subject of an IPO.

<sup>18</sup> See Rule 11.350(a)(2).

<sup>19</sup> See Rule 11.350(a)(29).

<sup>20</sup> All times are in Eastern Time.

<sup>21</sup> See Rule 11.350(a)(1)(C). For an IPO Auction, the IPO Auction Book would include Market-On-Open, Limit-On-Open, and market orders with a time-in-force of DAY, as well as limit orders with a time in-force of DAY, GTX, GTT, SYS, FOK, or IOC.

<sup>22</sup> See Rule 11.350(a)(5).

<sup>23</sup> See Rule 11.350(a)(9).

10:15 a.m. Pursuant to Rule 11.280(g)(7), IEX will declare a regulatory halt before the start of the Pre-Market Session for a security that is the subject of an IPO on IEX, and therefore there will be no Continuous Book for such security. The Order Acceptance Period for an IPO Auction may be extended at the time of the auction match pursuant to Rules 11.350(e)(2)(B)(i)-(iv):

- Automatically for five (5) minutes when there are unmatched shares from market orders on the IPO Auction Book;
- Automatically for five (5) minutes when the Indicative Clearing Price<sup>24</sup> at the time of the IPO Auction match differs by the greater of five percent (5%) or fifty cents (\$0.50) from any of the previous fifteen (15) Indicative Clearing Price disseminations;
- Automatically during the Pre-Launch Period<sup>25</sup> when the IPO Auction match price is above (below) the upper (lower) price band selected by the underwriter pursuant to proposed Rule 11.280(h)(8), until the clearing price is within such bands; or
- Manually upon request from the underwriter at any time prior to the auction match.

Furthermore, Rule 11.280(h)(8) governs the process for resuming from a trading halt initiated under Rule 11.280(g)(7) for a security that is the subject of an IPO. Thus, in addition to the systemic processes described above that govern the IPO Auction match, there is a series of procedural steps to complete an IPO Auction, which include input from and coordination with the IPO underwriter. Specifically, pursuant to Rule 11.280(h), thirty (30) minutes after the start of the Display Only Period, unless extended by the underwriter, the security will enter a Pre-Launch Period of indeterminate duration. The Pre-Launch Period will end immediately after the transition to the Regular Market

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<sup>24</sup> See Rule 11.350(a)(9)(E).

<sup>25</sup> See Rule 11.280(h)(8).

Session following the IPO Auction match,<sup>26</sup> pending:

- Notification from the underwriter that the security is ready to trade;
- Subsequent approval of the Indicative Clearing Price at the time of such notification; and
- Validation that each of the conditions for the extension of the Order Acceptance Period set forth in Rules 11.350(e)(2)(B)(i)-(iv) are not satisfied.

Lastly, pursuant to Rule 11.280(h)(9), the process for halting and initial pricing of a security that is the subject of an IPO shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an IPO.

#### IEX Opening Auction

Pursuant to Rule 11.350(c)(1), Users may submit orders eligible for execution in the Opening Auction<sup>27</sup> at the beginning of the Pre-Market Session, which begins at 8:00 a.m. Any orders designated for the Opening Auction Book<sup>28</sup> will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. In addition to orders on the Opening Auction Book, limit orders on the Continuous Book with a time-in-force of SYS or GTT are eligible to execute in the Opening Auction (“Pre-

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<sup>26</sup> See Rule 11.350(e)(3).

<sup>27</sup> See Rule 11.350(c).

<sup>28</sup> Pursuant to Rule 11.350(a)(1)(A), orders on the Opening Auction Book would include MOO orders, LOO orders, market orders with a time-in-force of DAY, and limit orders with a time-in-force of DAY or GTX.

market Continuous Book”).<sup>29</sup> The Exchange does not place any restrictions on the entry of orders to the Pre-market Continuous Book to avoid unnecessary disruptions to continuous trading.

Pursuant to proposed Rule 11.350(c)(2), beginning at the Opening Auction Lock-in Time<sup>30</sup> and updated every one second thereafter, the Exchange will disseminate IEX Auction Information via electronic means. The Exchange will attempt to conduct an Opening Auction for all IEX-listed securities at the start of Regular Market Hours (i.e., 9:30 a.m.) in accordance with the clearing price determination process set forth in Rule 11.350(c)(2)(B). All orders eligible for execution in the Opening Auction (i.e., orders on the Opening Auction Book and orders on the Pre-Market Continuous Book that are not Auction Ineligible Orders)<sup>31</sup> are Auction Eligible Orders. Auction Eligible Orders will be ranked and maintained in accordance with IEX auction priority, pursuant to Rule 11.350(b). Moreover, pursuant to Rule 11.350(a)(2), non-displayed buy (sell) orders on the Pre-Market Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range<sup>32</sup> will be priced at the lower (upper) threshold of the Reference Price Range for the purpose of determining the clearing price,<sup>33</sup> but will be ranked and eligible for execution in the Opening Auction

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<sup>29</sup> See Rule 11.190(a)(1)(E)(iv) and (vi).

<sup>30</sup> See Rule 11.350(a)(22).

<sup>31</sup> See Rule 11.350(a)(3).

<sup>32</sup> See Rule 11.350(a)(30).

<sup>33</sup> Note, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the at the lower (upper) threshold of the Reference Price Range for the purpose of determining the clearing price and the Indicative Clearing Price disseminated in IEX Auction Information as set forth in Rule 11.350(a)(9)(E).

match at the order's resting price.<sup>34</sup>

### Proposed Changes

The Exchange proposes to clarify that a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) (i.e., a financial advisor to the issuer is willing to perform the specified underwriter functions for a security that was not listed on a national securities exchange or traded pursuant to FINRA form 211 immediately prior to the initial pricing) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction. As described above, current Exchange Rule 11.350(e) states in relevant part that an IPO Auction will be utilized for the launch of a new issue. However, pursuant to Rule 11.280(g)(7), IEX may only issue a regulatory halt before the start of the Pre-Market Session for a security that is the subject of an IPO on IEX, or pursuant to Rule 11.280(h)(9).

Therefore, the IPO Auction process, which pre-supposes there is no trading in the security prior to the IPO Auction match, would be suboptimal for the launch of a new issue that is not an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), because the Exchange does not have authority to initiate a regulatory trading halt, and thus such securities would be eligible for trading during the Pre-Market Session. The IPO Auction process is designed to aggregate all existing liquidity in a security and execute the maximum number of shares at a price that accurately reflects supply and demand. The IPO Auction is not designed to account for continuous trading, and thus running an IPO

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<sup>34</sup> The Exchange notes that in the case of an IPO, Halt, or Volatility Auction, there is no continuous trading and therefore no Continuous Book. Accordingly, there would be no non-displayed interest on the Continuous Book to which this functionality would apply.

Auction alongside continuous trading could result in auction pricing that does not account for all available interest in, or reflect the current market for, the security. Accordingly, the Exchange is proposing to clarify that an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction.

Lastly, the Exchange proposes to make corresponding changes to Rules 11.350(a)(6) and (7), which define the terms “Final Consolidated Last Sale Eligible Trade”,<sup>35</sup> and “Final Last Sale Eligible Trade”,<sup>36</sup> respectively. Specifically, the Exchange proposes to add a new subparagraph (i) to paragraph (A) of Rules 11.350(a)(6) and (7) to specify that if there is no qualifying previous official closing price for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), the Final Consolidated Last Sale Eligible Trade and the Final Last Sale Eligible Trade will be equal to issue price. Furthermore, the Exchange proposes to amend subparagraph (B) of

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<sup>35</sup> Pursuant to Rule 11.350(a)(6), the Final Consolidated Last Sale Eligible Trade is the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape System (“Consolidated Tape”), rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer. If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the previous official closing price; and in the case of an IPO or the initial pricing of any other security pursuant to Rule 11.280(h)(9), the issue price. See also Rules 11.350(a)(30) and (33), as well as Rules 11.350(d)(4)(B)(i) and (ii), which utilize the defined term in a variety of contexts, none of which are significantly impacted by the proposed changes.

<sup>36</sup> Pursuant to Rule 11.350(a)(7), the Final Last Sale Eligible Trade is the last trade on IEX prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape. If there is no qualifying Final Last Sale Eligible Trade for the current day, the previous official closing price; and in the case of an IPO or launch of a new issue, the issue price. See also Rules 11.350(d)(2)(B) and (D); as well as Rule 11.350(f)(3)(B)(ii), which each utilize the defined term in a variety of contexts, none of which are significantly impacted by the proposed changes.

Rules 11.350(a)(6) and (7) to replace the broad language referencing “the launch of a new issue” with a more specific cross reference to the initial pricing of any other security pursuant to Rule 11.280(h)(9). Thus, as proposed:

- For a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9):
  - The security will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction; and
  - The Final Consolidated Last Sale Eligible Trade will be equal to the last trade prior to the end of Regular Market Hours, rounded to the nearest Minimum Price Variant (“MPV”) or Midpoint Price calculated by the System, whichever is closer:<sup>37</sup>
    - If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the previous official closing price; or
    - If there is no qualifying previous official closing price for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), the issue price.
  - The Final Last Sale Eligible Trade will be equal to the last trade on IEX prior to the end of Regular Market Hours,<sup>38</sup> or if there is no qualifying Final Last Sale Eligible Trade for the current day, the issue price.
- For a security that is the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9):
  - The Exchange will conduct an IPO Auction;
  - The Final Consolidated Last Sale Eligible Trade will be equal to the last trade prior to the end of Regular Market Hours, rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer:<sup>39</sup>
    - If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the issue price.
  - The Final Last Sale Eligible Trade will be equal to the last trade on IEX prior to the end of Regular Market Hours:<sup>40</sup>

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<sup>37</sup> However, where applicable, it will be the last trade prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape, rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer. See Rule 11.210 specifying the MPV and Rule 1.160(t) defining Midpoint Price.

<sup>38</sup> However, where applicable, it will be the last trade prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape.

<sup>39</sup> See supra note 37.

<sup>40</sup> See supra note 38.

- If there is no qualifying Final Last Sale Eligible Trade for the current day, the issue price.

The Exchange believes the proposed modifications to paragraphs (e) and (a) of Rule 11.350 and the addition of Supplemental Material .01 and .02 to Rule 11.350(e) are designed to avoid any potential confusion regarding which of the IEX Auctions will be utilized to process an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), and therefore further clarifies the Exchange's auction processing. In addition, as announced in IEX Trading Alerts [#2017-015](#) and [#2017-046](#), the Exchange intends to become a primary listing exchange and support its first IEX-listed security in 2018.<sup>41</sup> As part of the listings initiative, the Exchange is providing a series of industry wide weekend tests for the Exchange and its Members to exercise the various technology changes required to support IEX Auctions and listings functionality.<sup>42</sup> Accordingly, the Exchange is proposing to clarify paragraphs (e) and (a) of Rule 11.350 and add Supplemental Material .01 and .02 to Rule 11.350(e) as described above in advance of the industry wide testing period in 2018 in order to avoid potential confusion, and allow Members and other market participants time to develop, test, and

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

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

deploy any necessary changes to support IEX Auctions.

## 2. Statutory Basis

IEX believes that the proposed rule changes are consistent with the provisions of Section 6(b)<sup>43</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>44</sup> in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to paragraphs (e) and (a) of Rule 11.350 and the addition of Supplemental Material .01 and .02 to Rule 11.350(e) are consistent with the protection of investors and the public interest in that they do not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in a new IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9). In this regard, the Exchange believes that the choice of which auction applies is consistent with the Act because the IPO Auction presupposes that a financial advisor is willing to perform the specified underwriter functions and it would not make sense to use an IPO Auction in the absence of such a financial advisor. Further, the proposed progression of reference prices that will be utilized as the Final Consolidated Last Sale Eligible Trade and the Final Last Sale Eligible Trade for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) is consistent with the protection of investors and the public

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

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

interest in that such prices most accurately reflect the market for the security and are also consistent with the Exchange's current reference prices.

Furthermore, the Exchange believes the proposed rule changes are consistent with the protection of investors and the public interest because as described above, the IPO Auction is not designed to account for continuous trading, and thus running an IPO Auction alongside continuous trading could result in auction pricing that does not account for all available interest in, or reflect the current market for, the security. Accordingly, the Exchange proposes to clarify that an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours, rather than an IPO Auction.

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

IEX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in that the proposed rule changes are consistent with the rules of other primary listing markets.<sup>45</sup> Thus, the Exchange believes there are no new inter-market competitive burdens imposed as a result of the proposed rule changes.

In addition, the Exchange does not believe that the proposed changes will have any impact on intra-market competition. Specifically, as discussed above, the proposed clarification does not alter the substantive functionality governing the IPO or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in a new IEX-listed security that

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<sup>45</sup> See e.g., the Nasdaq Stock Market, LLC ("Nasdaq") Rules 4753 and 4120(c)(8)-(9).

is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9).

Furthermore, the Exchange believes the proposed rule change is designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the benefit of all market participants. Lastly, the Exchange notes that the proposed changes will apply to all Members on a fair and equal basis. Accordingly, the Exchange believes there are no new intra-market competitive burdens imposed as a result of the proposed rule changes.

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

Written comments were neither solicited nor received.

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

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

A proposed rule change filed under Rule 19b-4(f)(6)<sup>48</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

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<sup>46</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>47</sup> 17 CFR 240.19b-4(f)(6).

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

4(f)(6)(iii),<sup>49</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.

The Exchange respectfully requested that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. As discussed above, the Exchange believes that the proposed rule changes are consistent with the protection of investors and the public interest because they do not alter the substantive functionality governing the IPO Auction or Opening Auction processes. Instead, the proposed changes simply clarify which of the existing IEX Auction processes will be utilized to begin trading in an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9). Furthermore, as discussed above, the proposed rule change is designed to make IEX's rules more complete, and descriptive of the System's functionality to avoid any potential confusion among Members and market participants regarding such functionality, to the benefit of all market participants. Moreover, the Exchange believes there are no intra-market competitive burdens imposed as a result of the proposed rule changes because, as discussed above, the proposed rules will apply to all Members on a fair and equal basis. Therefore, the Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest in that the proposed changes do not raise any new or novel issues that the Commission has not already considered.

Lastly, the Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because, as discussed above, it is

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

designed to avoid any potential confusion regarding IEX Auctions as IEX continues industry-wide testing to exercise the technology changes being made by the Exchange and its Members to support IEX as a listings market, including IEX Auctions.<sup>50</sup>

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)<sup>51</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2018-08 on the subject line.

##### Paper Comments:

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

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<sup>50</sup> See *supra* note 42.

<sup>51</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-IEX-2018-08. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at [www.iextrading.com](http://www.iextrading.com). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2018-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

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<sup>52</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.

## CHAPTER 11. TRADING RULES

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## Rule 11.350. Auctions.

## (a) Definitions.

(1) – (5) No change.

(6) The term “Final Consolidated Last Sale Eligible Trade” shall mean the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape System (“Consolidated Tape”), rounded to the nearest MPV or Midpoint Price calculated by the System, whichever is closer.

(A) If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the previous official closing price; [and]

(i) If there is no qualifying previous official closing price for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), the issue price; and

(B) In the case of an IPO or the initial pricing of any other security pursuant to Rule 11.280(h)(9),[launch of a new issue,] the issue price.

(7) The term “Final Last Sale Eligible Trade” shall mean the last trade on IEX prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape.

(A) If there is no qualifying Final Last Sale Eligible Trade for the current day, the previous official closing price; [and]

(i) If there is no qualifying previous official closing price for a security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9), the issue price; and

(B) In the case of an IPO or the initial pricing of any other security pursuant to Rule 11.280(h)(9),[launch of a new issue,] the issue price.

(8) – (33) No change.

(b) – (d) No change.

(e) IPO and Halt Auctions. For trading in an IEX-listed security in an initial public offering (an “IPO”), or the initial pricing of any other security pursuant to Rule 11.280(h)(9), [launch of a new issue,] the Exchange will conduct an IPO Auction, as described below. Following a trading halt in an IEX-listed security pursuant to IEX Rule 11.280(g)(1), (4), or (5), the Exchange will conduct a Halt Auction, as described below.

(1) – (4) No change.

••• Supplementary Material •••

.01 The Exchange will conduct an IPO Auction for securities that are the subject of an initial public offering. Pursuant to section 12(f)(1)(G)(i)-(ii) of the Securities and Exchange Act, a security is the subject of an initial public offering if the offering of the subject security is registered under the Securities Act of 1933, the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of the Securities and Exchange Act, and the initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered. In addition, the Exchange will also conduct an IPO Auction for the initial pricing of any other security pursuant to Rule 11.280(h)(9). Pursuant to Rule 11.280(h)(9), the process for halting and initial pricing of a security that is the subject of an IPO shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an initial public offering.

.02 Initial trading for an IEX-listed security that is not the subject of an IPO or otherwise being priced pursuant to Rule 11.280(h)(9) will be eligible to begin trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours. For example, if an issuer with a class of common stock listed on IEX offers and lists a preferred class of securities on IEX, the offering of such securities would not constitute an initial public offering pursuant to section 12(f)(1)(G)(i) of the Securities and Exchange Act. Therefore, if the security does not qualify for the process of halting and initial pricing of a security pursuant to Rule 11.280(h)(9) (e.g., because there is no broker-dealer serving in the role of financial advisor to the issuer of the securities being listed that is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an initial public offering), such security will be eligible for trading in the Pre-Market Session and have an Opening Auction on IEX at the start of Regular Market Hours.

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