

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 *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

**Description**

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

Proposed rule change related to transaction fees pursuant to IEX Rule 15.110.

**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) 629-5622 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 09/11/2020

By Nathaniel Kolodny

Lead Regulation Counsel

Nathaniel Kolodny,

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 modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to establish fees for the execution of Discretionary Limit (“D-Limit”) orders, including pricing incentives for certain D-Limit, Discretionary Peg (“D-Peg”), and Midpoint Peg (“M-Peg”) order executions. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,<sup>3</sup> and will be implemented in conjunction with the full launch of D-Limit trading on October 1, 2020.<sup>4</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 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

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See IEX Trading Alert #2020 – 024 (Discretionary Limit (D-Limit) Order Type Launch) issued on August 28, 2020, available at <https://iextrading.com/alerts/#/121>. All D-Limit, D-Peg, and M-Peg executions that occur prior to October 1, 2020 will be subject to the fee schedule in effect prior to October 1, 2020.

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

Nathaniel I. 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 establish fees for the execution of Discretionary Limit ("D-Limit") orders, including pricing incentives for certain D-Limit, Discretionary Peg ("D-Peg") and Midpoint Peg ("M-Peg") order executions. Changes to the Fee Schedule, as proposed, will be implemented in conjunction with the full launch of D-Limit trading on October 1, 2020.<sup>5</sup>

D-Limit Overview

The D-Limit order type was approved by the Commission on August 26, 2020,<sup>6</sup> and is designed to protect liquidity providers from potential adverse selection by latency arbitrage trading strategies in a fair and nondiscriminatory manner.<sup>7</sup> A D-Limit order

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<sup>5</sup> See supra note 4.

<sup>6</sup> See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15) ("D-Limit Approval Order").

<sup>7</sup> See Securities Exchange Act Release No. 87814 (December 20, 2019), 84 FR 71997,

may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book<sup>8</sup> is priced to be equal to and ranked at the order's limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g).<sup>9</sup> Otherwise, a D-Limit order operates in the same manner as either a displayed or non-displayed limit order, as applicable.<sup>10</sup>

#### Proposed D-Limit Fees

As proposed, liquidity taking D-Limit orders will be subject to the same transaction fees as other displayed or non-displayed orders.<sup>11</sup> However, in order to incentivize the entry of liquidity providing D-Limit orders, IEX proposes to establish pricing incentives, including free executions of certain liquidity providing D-Limit orders and discounted execution fees for certain liquidity providing D-Peg and M-Peg orders.

Specifically, as proposed, any Member<sup>12</sup> that enters a D-Limit order that provides liquidity, with the exception of executions of such orders at a price below \$1.00 per share, will be entitled to free executions and certain reduced transaction fees (in lieu of the fees otherwise specified and unless a lower fee applies)<sup>13</sup> as described below:

- A D-Limit order that provides liquidity and is executed at a price at or above \$1.00 per share results in a free execution.
- D-Peg and M-Peg orders that provide liquidity and execute at a price at or

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71998 (December 30, 2019) (SR-IEX-2019-15) (“D-Limit Proposal”).

<sup>8</sup> See IEX Rule 1.160(p).

<sup>9</sup> See IEX Rules 11.190(b)(7) and 11.190(g).

<sup>10</sup> See IEX Rule 11.190(b)(7).

<sup>11</sup> Generally, IEX currently charges \$.0003 per share for any displayed orders that execute (whether they add or remove liquidity) and \$.0009 per share for any non-displayed orders that execute (whether they add or remove liquidity). If the shares execute for less than \$1.00 per share, the Exchange charges 0.30% of the total dollar value of the transaction. See IEX Fee Schedule, <https://iextrading.com/trading/fees/>.

<sup>12</sup> See IEX Rule 1.160(s).

<sup>13</sup> See IEX Fee Schedule, <https://iextrading.com/trading/fees/>.

above \$1.00 per share will be subject to a discount of \$0.0002 per share from the fee that would otherwise be charged for the number of shares of such orders executed up to the number of shares of D-Limit orders that provided liquidity and executed at a price at or above \$1.00 per share during such time period by the same Member, measured on a monthly basis.

- IEX will aggregate all of a Member's MPIDs to calculate each Member's D-Peg, M-Peg, and D-Limit liquidity providing orders on a monthly basis. In addition, a Member may request that the Exchange aggregate its activity with activity of such Member's affiliated Members. A Member requesting aggregation of affiliate activity is required to certify to the Exchange the affiliate status of Members whose activity it seeks to aggregate prior to receiving approval for aggregation and inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange shall review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity.<sup>14</sup> The Exchange shall approve a request unless it determines that the certification is not accurate.<sup>15</sup>

The proposed fees are designed to provide a narrowly tailored incentive for Members to utilize a new and innovative order type. IEX understands that Members seeking to utilize the new D-Limit order type may need to modify and test their trading strategies and order entry systems in order to do so, and the proposed fees are designed to provide a meaningful economic incentive for such efforts.

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<sup>14</sup> For example, the Exchange would review a Member's Form BD in FINRA's Central Registration Depository ("CRD") to verify that the Member(s) for which it seeks aggregation pursuant to the proposed rule is under 75% common ownership or control of the requesting Member.

<sup>15</sup> If two or more Members become affiliated on or prior to the sixteenth day of a month and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more Members become affiliated after the sixteenth day of a month or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month. For purposes of applying the fees and discounts proposed herein, references to Member shall include the Member and any of its affiliates that have been approved for aggregation, and the term "affiliate" shall mean any Member under 75% common ownership or control of that Member.

IEX believes that offering free executions for specified D-Limit orders, as well as a discount for qualifying D-Peg and M-Peg orders, will provide a meaningful incentive to Members to adopt the use of D-Limit orders. IEX operates in a highly competitive environment in which a large number of national securities exchanges and other venues offer markets for the execution of equities transactions, and in which market participants can readily direct order flow to other venues. Accordingly, IEX believes that it is important to provide meaningful incentives for the adoption of D-Limit orders to demonstrate the value of the order type in protecting against certain types of latency arbitrage and thereby result in increasing use of the order type.

D-Peg and M-Peg order types are widely used and have achieved significant adoption by a diverse group of IEX Members. Consequently, IEX believes that combining free executions for certain liquidity providing D-Limit orders with discounted executions for certain liquidity providing D-Peg and M-Peg orders, as described above, will effectively augment the incentive value provision of free D-Limit liquidity providing executions for orders executed at or above \$1.00.

IEX believes that providing pricing incentives to liquidity providing orders will best incentivize the adoption of D-Limit orders. While a D-Limit order can take liquidity upon entry, IEX believes that its commercial success will be based on Members having favorable experiences as liquidity adders, particularly for displayed liquidity providing D-Limit orders. As the Commission noted in the D-Limit Approval Order:

[E]xchange functionality that protects resting displayed orders against adverse selection resulting from latency arbitrage will improve the execution quality experienced by market participants that post displayed liquidity and are affected by such adverse selection. This improved execution quality could encourage more displayed liquidity, which in turn, would contribute to fair and

orderly markets and support the public price discovery process. Specifically, if sufficiently protected against being “picked off” when the conditions for latency arbitrage are present, long term investors will no longer experience those relatively poor executions and thus will have less incentive to avoid posting displayed orders on exchanges.<sup>16</sup>

IEEX believes that targeting fee incentives to liquidity adders will enable Members to see for themselves the benefits of using the innovative D-Limit order type, while adding to the pool of displayed (as well as non-displayed) liquidity from which all market participants will benefit.

Specifically, IEEX believes that the proposed fees are a narrowly tailored approach that is designed to increase liquidity on IEEX, which would benefit investors in securities traded on IEEX. Specifically, to the extent Members post more displayed D-Limit orders on IEEX, price discovery would be enhanced drawing more natural trading interest to the public markets, which would deepen liquidity and dampen the impact of shocks from liquidity demand. The Exchange notes that other exchanges offer a diverse range of fee-based incentives to their members for trading activity that they believe incentivizes liquidity adding orders, and thereby improves market quality.<sup>17</sup>

Importantly, the Exchange is not proposing to offer a rebate, in that the proposed fee reduction will not be greater than the fee charged for executions on the Exchange.

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<sup>16</sup> See D-Limit Approval Order, *supra* note 6, 54443.

<sup>17</sup> Notably, several exchanges pay rebates to Members for liquidity adding orders, which means the exchanges actually pay Members to add liquidity. See, e.g., New York Stock Exchange Price List as of August 20, 2020 (offering free execution for liquidity adding orders, with rebates ranging from \$0.0000 to \$0.0030 per share executed), [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf); and Nasdaq Equity 7 Pricing Schedule (offering free execution for liquidity adding orders, with rebates ranging from \$0.00005 to \$0.0033 per share executed). See <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-equity-7>.

The Exchange will offer a discount to the fees charged for qualifying orders, but such discounts will not result in any net payments to Members for the execution of such orders. The proposed fees are designed to provide an alternative fee-based incentive to Members to utilize a new order type on IEX.

Finally, IEX notes that the affiliate aggregation for purposes of applying D-Limit fees and discounts is similar to pricing structures in place at other exchanges. For example, the New York Stock Exchange, Inc. (“NYSE”) pricing rules provide that “[f]or purposes of applying any provision of the Price List where the charge assessed, or credit provided, by the Exchange depends upon the volume of a member organization's activity, a member organization may request that the Exchange aggregate its eligible activity with the eligible activity of its affiliates.” The NYSE Price List also includes provisions regarding aggregation requests, and the timing thereof, that are substantially similar to those proposed in this rule change. Nasdaq Stock Market (“Nasdaq”) pricing rules contain virtually identical provisions.<sup>18</sup>

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>20</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX members and persons using its facilities. Additionally, IEX believes that the

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<sup>18</sup> See NYSE’s Price List, available at: [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf); see also Nasdaq Equities 7 Pricing Schedule, Section 127.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

proposed fees are consistent with the investor protection objectives of Section 6(b)(5)<sup>21</sup> of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in facilitating transactions in securities; 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; and are not designed to permit unfair discrimination between customers, brokers, or dealers.

The Exchange believes that the proposed fees are consistent with the Act because they would be available to all Members on a fair, equal and nondiscriminatory basis. All Members, regardless of their technological sophistication, can enter D-Limit liquidity providing orders priced to execute at or above \$1.00.<sup>22</sup> Similarly, all Members, regardless of their technological sophistication, can enter liquidity providing D-Peg and M-Peg orders priced to execute at or above \$1.00. Thus, all Members are able to benefit from the proposed fees on a fair, equal and nondiscriminatory basis.

The proposed fees take a narrowly tailored approach, designed to maximize participation for the launch of D-Limit by incentivizing the entry of certain displayed and non-displayed liquidity adding D-Limit orders. As noted in the Purpose section, IEX understands that Members seeking to utilize the D-Limit order type may need to modify and test their trading strategies and order entry systems in order to do so, and the proposed fees are designed to provide a meaningful economic incentive for such efforts.

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<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> See D-Limit Approval Order, supra note 6, 54450 (“Because IEX will reprice all D-Limit orders without further action from the user, all users will benefit equally regardless of their technological capabilities and ability to take action within a prescribed period.”)

As discussed in the Purpose section, IEX believes that the proposed fees are narrowly tailored to incentivize Members to enter liquidity providing D-Limit, D-Peg and M-Peg orders on IEX that execute at or above \$1.00, which would have several benefits to investors in securities traded on IEX. First, to the extent Members post more displayed D-Limit orders on IEX, price discovery would be enhanced potentially drawing more natural trading interest to the public markets, which would deepen liquidity and dampen the impact of shocks from liquidity demand. Second, incentivizing the entry of both displayed and non-displayed liquidity adding orders should deepen the Exchange's liquidity pool and contribute to public price discovery, consistent with the goal of enhancing market quality. Third, to the extent that the proposed fees incentivize additional liquidity providing D-Peg and M-Peg orders that execute at the Midpoint Price<sup>23</sup> and at or above \$1.00, such orders will result in benefits to counterparties, offering price improvement over the prevailing national best bid and offer prices.<sup>24</sup> Finally, to the extent price discovery is enhanced and more orders are drawn to the public markets, orders executed on IEX will have the benefit of exchange transparency, regulation, and oversight. These benefits would generally apply to all Members, even if a Member elects to not use the D-Limit order type.

Additionally, IEX notes that it operates in an increasingly competitive and fragmented marketplace consisting of a large number of national securities exchanges and non-exchange venues that trade equity securities. As a relatively small market, IEX believes that meaningful pricing incentives are necessary to encourage market

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<sup>23</sup> See IEX Rule 1.160(t).

<sup>24</sup> See IEX Rule 1.160(u).

participants to utilize the new D-Limit order type and address the significant competitive challenges of attracting liquidity to the Exchange. While the Exchange believes that adding liquidity with a D-Limit order with less risk of adverse selection should provide an incentive for Members to use D-Limit, the Exchange also believes that offering Members the proposed fees will enhance such incentive.

The Exchange notes that other exchanges offer a diverse range of pricing incentives to their members for providing certain order flow. For example, Cboe BZX Exchange, Inc. offers free executions for orders that participate in its new Cboe Market Close, which it describes as a “competitive pricing structure designed to incentivize market participants to direct their [Market-On-Close] orders to the Cboe Market Close, which the Exchange believes would facilitate the execution of those orders....”<sup>25</sup> And several exchanges offer rebate tiers for liquidity adding orders, which increase in value as the member increases its volume of liquidity adding orders.<sup>26</sup> Furthermore, several exchanges use “cross-asset” incentives, which offer pricing incentives to members that submit different order types to the exchange.<sup>27</sup> Similarly, other exchanges have fee

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<sup>25</sup> See Securities Exchange Act Release No. 88487 (March 26, 2020), 85 FR 18290 (April 1, 2020) (SR-CboeBZX-2020-027).

<sup>26</sup> See e.g., “Nasdaq Growth Program,” Nasdaq Equity 7 Section 114 (paying a \$0.0025 per share rebate to a member that adds a daily average of 750,000 or more shares and also increases its volume of shares traded on Nasdaq in prior months by 20%; and paying a larger \$0.0027 per share rebate if that member increases its share of liquidity adding volume by at least 50% versus its August 2016 share of liquidity adding volume); see also NYSE Arca Equities Fee Schedule, Retail Order Step-Up Tiers 1-3 (paying rebates ranging from \$0.0035 to \$0.0037 per share for retail orders that provide displayed liquidity with the rebates increasing as the member submits more retail orders (both adding and taking) in any given month when compared to a prior period).

<sup>27</sup> See, e.g., NYSE Arca Equities Fee Schedule, Cross-Asset Tiers 1-2 (paying rebates of \$0.0031 per share and \$0.0030 per share, respectively, for adding more than 0.30% of consolidated average daily volume concurrent with an affiliate meeting certain volume

structures that use trading in one order type to incentivize trading either in another order type or more generally, as well as coupling requirements of displayed and non-displayed volume to qualify for preferential pricing, that are analogous to IEX's proposal to provide discounts to certain D-Peg and M-Peg executions to incentive the use of D-Limit orders.<sup>28</sup> Additionally, other exchanges have fee structures that incentivize the posting of non-displayed liquidity adding orders, which is analogous to how the proposed fees incentivize non-displayed liquidity adding M-Peg and D-Peg orders, in addition to incentivizing liquidity adding D-Limit orders.<sup>29</sup> Finally, maker-taker exchanges pay

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thresholds on the NYSE Arca Options exchange). See [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf). See also, Cboe BZX Exchange, Inc. Cross-Asset Tape B Tier (paying a rebate of \$0.0031 per share for adding volume since February 2015 equal to or greater than 0.06% of total consolidated volume if the member also has an options market maker that added options customer volume equal to or greater than 1.00%), available at [http://markets.cboe.com/us/equities/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/).

<sup>28</sup> See Nasdaq Equities 7 Pricing Schedule, Section 118 (providing lower fees or higher rebates/credits for specified levels of volume, either generally or through the use of a particular order type if coupled with specified volume in other specified order types, including several examples of rebates tied to adding displayed liquidity and non-displayed liquidity at specified levels of volume). For example, Nasdaq pays a rebate of \$0.00295 per share for adding more than 0.70% of total consolidated volume ("TCV"), provided that at least 0.20% of the added TCV was done with midpoint and midpoint extended life orders, and the member also removed at least 1.10% of TCV). Similarly, Nasdaq pays a rebate of \$0.0027 per share for displayed quotes/orders that provide liquidity if the member also takes and provides specified levels of consolidated volume and provides a daily average of at least 800,000 shares of non-displayed liquidity during the month in question; see also NYSE Arca Equities Fee Schedule, Limit Non-Displayed Order Step Up Tier (paying rebates ranging from \$0.0004 to \$0.0020 per share for meeting certain thresholds of adding limit non-displayed liquidity and adding midpoint (non-displayed) liquidity). Similarly, NYSE Arca pays rebates ranging from \$0.0029 to \$0.0031 per share for orders that meet certain thresholds for adding displayed liquidity, removing liquidity, and participating in the exchange's closing auctions, including additional rebates of between \$0.0010 to \$0.0020 per share for adding liquidity with non-displayed midpoint orders.

<sup>29</sup> See Nasdaq Equities 7 Pricing Schedule, Section 118 (providing rebates of between

rebates to members that add liquidity,<sup>30</sup> while taker-maker exchanges pay rebates to members that take liquidity, in each case to incentivize such order flow.<sup>31</sup>

The proposed fees are designed to provide a simple, non-rebate incentive to market participants to enter certain liquidity providing D-Limit orders on IEX, through free executions and discounts on certain D-Peg and M-Peg orders.

The Exchange further believes that the proposed fees are consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees because all Members are eligible for incentive pricing on the same terms and conditions, and there are no restrictions on the use of impacted order types. Additionally, IEX believes that it is reasonable to incentivize Members to use certain D-Limit liquidity providing orders in view of the potential burdens on those Members that choose to adopt this new order type and the highly competitive market in which IEX operates, which provides myriad alternatives to Members. Furthermore, the Exchange believes that the proposed fees are an equitable allocation of fees because to the extent the incentive pricing results in increased liquidity on IEX, all market participants will benefit, irrespective of if the market participant is an IEX Member that submits certain liquidity adding D-Limit, D-Peg, and M-Peg orders. Accordingly, IEX believes that the proposed fees constitute an

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\$0.0005 to \$0.0075 per share for adding non-displayed liquidity at specified levels of volume, provided that some of the added non-displayed liquidity was done with various combinations of midpoint and midpoint extended life orders).

<sup>30</sup> See *supra* note 17.

<sup>31</sup> Cboe EDGA pays a \$0.018 per share rebate for liquidity taking orders, *see* [https://markets.cboe.com/us/equities/membership/fee\\_schedule/edga/](https://markets.cboe.com/us/equities/membership/fee_schedule/edga/); Cboe BYX pays a \$0.005 per share rebate for liquidity taking orders, *see* [https://markets.cboe.com/us/equities/membership/fee\\_schedule/byx/](https://markets.cboe.com/us/equities/membership/fee_schedule/byx/); and Nasdaq BX pays between \$0.0000 and \$0.0030 per share for liquidity taking orders, *see* Nasdaq BX Equity 7, <https://listingcenter.nasdaq.com/rulebook/bx/rules/bx-equity-7>.

equitable allocation of fees.

Moreover, the Exchange believes that the proposal to cap the \$0.0002 discount on certain D-Peg and M-Peg orders executed by a Member (including any aggregated affiliates) at the number of D-Limit liquidity adding shares executed by that Member in the same month is reasonable, because the cap is designed to further incentivize Members to submit certain liquidity-adding D-Limit orders. Further, all Members will benefit from the discount in the same manner based on the number of qualifying D-Limit liquidity adding shares they execute.

Finally, the Exchange believes that the proposed aggregation provision is consistent with the protection of investors and the public interest because it establishes a clear policy with respect to affiliate aggregation for fee purposes that is common among other exchanges, thereby promoting Members' understanding of the parameters of the D-Limit fee and discount structure and the efficiency of its administration. The proposed rule is equitable because all similarly situated members are subject to the proposed rules equally, and access to the Exchange is offered on fair and nondiscriminatory terms.

All Members seeking to aggregate their activity are subject to the same reasonable parameters, in accordance with a standard that recognizes an affiliation as of the month's beginning, or close in time to when the affiliation occurs, provided the Member submits a timely request. Moreover, the proposed billing aggregation language is reasonable because it establishes a standard for implementation of aggregation requests that is easy to administer and that reflects the need for the Exchange to review and approve aggregation requests while avoiding the complexities associated with proration of the bills of Members that become affiliated during the course of a month. The Exchange

believes that this approach will thus simplify the process of billing for the Exchange and its Members and is substantially similar to aggregation standards adopted by other exchanges.<sup>32</sup>

The Exchange also believes that the proposed rule change avoids disparate treatment of Members that have divided their various business activities between separate legal entities as compared to Members that operate those business activities within a single legal entity. The Exchange further notes that the aggregation provisions are reasonable and designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing with the rules across exchanges that govern the aggregation of certain activity for purposes of billing. In particular, as noted above, both Nasdaq and NYSE have substantially similar rules governing aggregation of activity for fee purposes.<sup>33</sup> Thus, the Exchange believes the proposed change does not present any unique or novel issues under the Act that have not already been considered by the Commission.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that the proposed fees would enhance competition and execution quality by increasing the Exchange's pool of both displayed and non-displayed liquidity, and to the extent that displayed liquidity increases, would contribute to the public price discovery process.

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<sup>32</sup> See supra note 18.

<sup>33</sup> Id.

The Exchange does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act since competing venues use various pricing structures to incentivize market participants to add liquidity to their markets, including but not limited to paying rebates to liquidity providers.<sup>34</sup> The proposed fees are a means of providing such incentives without the use of rebates, as described in the Purpose and Statutory Basis sections. And, as noted in the Statutory Basis section, other exchanges have adopted similar pricing incentives for their current offerings. Moreover, subject to the SEC rule filing process, other exchanges could adopt a similar order type and fee incentive. Further, the Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues, if its fees are viewed as non-competitive.

The Exchange also 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. While Members that add liquidity using certain D-Limit orders (as well as certain D-Peg and M-Peg orders) will be subject to different fees based on this usage, those differences are not based on the type of Member entering orders but on whether the Member chose to submit certain liquidity providing D-Limit orders. As noted above, not only can any Member submit certain liquidity adding D-Limit orders, but every Member would benefit from the availability of more liquidity on the Exchange that the proposed fees are designed to incentivize.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule

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<sup>34</sup> See supra note 17.

Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>35</sup> IEX has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>36</sup>

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

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

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

Not applicable.

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

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

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2020-14)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Transaction Fees Pursuant to IEX Rule 15.110.

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

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

Pursuant to the provisions of Section 19(b)(1) under the Act,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to establish fees for the execution of Discretionary Limit (“D-Limit”) orders, including pricing incentives for certain D-Limit, Discretionary Peg (“D-Peg”), and Midpoint Peg (“M-Peg”) order executions. Changes to

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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.

the Fee Schedule pursuant to this proposal are effective upon filing,<sup>6</sup> and will be implemented in conjunction with the full launch of D-Limit trading on October 1, 2020.<sup>7</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 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 establish fees for the execution of Discretionary Limit ("D-Limit") orders, including pricing incentives for certain D-Limit, Discretionary Peg ("D-Peg") and Midpoint Peg ("M-Peg") order executions. Changes to the Fee Schedule, as proposed, will be implemented in conjunction with the full launch of D-Limit trading on October 1,

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> See IEX Trading Alert #2020 – 024 (Discretionary Limit (D-Limit) Order Type Launch) issued on August 28, 2020, available at <https://iextrading.com/alerts/#/121>. All D-Limit, D-Peg, and M-Peg executions that occur prior to October 1, 2020 will be subject to the fee schedule in effect prior to October 1, 2020.

2020.<sup>8</sup>

### D-Limit Overview

The D-Limit order type was approved by the Commission on August 26, 2020,<sup>9</sup> and is designed to protect liquidity providers from potential adverse selection by latency arbitrage trading strategies in a fair and nondiscriminatory manner.<sup>10</sup> A D-Limit order may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book<sup>11</sup> is priced to be equal to and ranked at the order's limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g).<sup>12</sup> Otherwise, a D-Limit order operates in the same manner as either a displayed or non-displayed limit order, as applicable.<sup>13</sup>

### Proposed D-Limit Fees

As proposed, liquidity taking D-Limit orders will be subject to the same transaction fees as other displayed or non-displayed orders.<sup>14</sup> However, in order to incentivize the entry of liquidity providing D-Limit orders, IEX proposes to establish pricing incentives, including free executions of certain liquidity providing D-Limit orders and discounted execution fees for certain liquidity providing D-Peg and M-Peg orders.

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<sup>8</sup> See supra note 7.

<sup>9</sup> See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15) (“D-Limit Approval Order”).

<sup>10</sup> See Securities Exchange Act Release No. 87814 (December 20, 2019), 84 FR 71997, 71998 (December 30, 2019) (SR-IEX-2019-15) (“D-Limit Proposal”).

<sup>11</sup> See IEX Rule 1.160(p).

<sup>12</sup> See IEX Rules 11.190(b)(7) and 11.190(g).

<sup>13</sup> See IEX Rule 11.190(b)(7).

<sup>14</sup> Generally, IEX currently charges \$.0003 per share for any displayed orders that execute (whether they add or remove liquidity) and \$.0009 per share for any non-displayed orders that execute (whether they add or remove liquidity). If the shares execute for less than \$1.00 per share, the Exchange charges 0.30% of the total dollar value of the transaction. See IEX Fee Schedule, <https://iextrading.com/trading/fees/>.

Specifically, as proposed, any Member<sup>15</sup> that enters a D-Limit order that provides liquidity, with the exception of executions of such orders at a price below \$1.00 per share, will be entitled to free executions and certain reduced transaction fees (in lieu of the fees otherwise specified and unless a lower fee applies)<sup>16</sup> as described below:

- A D-Limit order that provides liquidity and is executed at a price at or above \$1.00 per share results in a free execution.
- D-Peg and M-Peg orders that provide liquidity and execute at a price at or above \$1.00 per share will be subject to a discount of \$0.0002 per share from the fee that would otherwise be charged for the number of shares of such orders executed up to the number of shares of D-Limit orders that provided liquidity and executed at a price at or above \$1.00 per share during such time period by the same Member, measured on a monthly basis.
- IEX will aggregate all of a Member's MPIDs to calculate each Member's D-Peg, M-Peg, and D-Limit liquidity providing orders on a monthly basis. In addition, a Member may request that the Exchange aggregate its activity with activity of such Member's affiliated Members. A Member requesting aggregation of affiliate activity is required to certify to the Exchange the affiliate status of Members whose activity it seeks to aggregate prior to receiving approval for aggregation and inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange shall review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity.<sup>17</sup> The Exchange shall approve a request unless it determines that the certification is not accurate.<sup>18</sup>

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

<sup>16</sup> See IEX Fee Schedule, <https://iextrading.com/trading/fees/>.

<sup>17</sup> For example, the Exchange would review a Member's Form BD in FINRA's Central Registration Depository ("CRD") to verify that the Member(s) for which it seeks aggregation pursuant to the proposed rule is under 75% common ownership or control of the requesting Member.

<sup>18</sup> If two or more Members become affiliated on or prior to the sixteenth day of a month and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more Members become affiliated after the sixteenth day of a month or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month. For purposes of applying the fees and discounts proposed herein, references to Member shall include the Member and any of its affiliates that have been approved for aggregation, and the term "affiliate" shall mean any Member under 75% common ownership or control of that Member.

The proposed fees are designed to provide a narrowly tailored incentive for Members to utilize a new and innovative order type. IEX understands that Members seeking to utilize the new D-Limit order type may need to modify and test their trading strategies and order entry systems in order to do so, and the proposed fees are designed to provide a meaningful economic incentive for such efforts.

IEX believes that offering free executions for specified D-Limit orders, as well as a discount for qualifying D-Peg and M-Peg orders, will provide a meaningful incentive to Members to adopt the use of D-Limit orders. IEX operates in a highly competitive environment in which a large number of national securities exchanges and other venues offer markets for the execution of equities transactions, and in which market participants can readily direct order flow to other venues. Accordingly, IEX believes that it is important to provide meaningful incentives for the adoption of D-Limit orders to demonstrate the value of the order type in protecting against certain types of latency arbitrage and thereby result in increasing use of the order type.

D-Peg and M-Peg order types are widely used and have achieved significant adoption by a diverse group of IEX Members. Consequently, IEX believes that combining free executions for certain liquidity providing D-Limit orders with discounted executions for certain liquidity providing D-Peg and M-Peg orders, as described above, will effectively augment the incentive value provision of free D-Limit liquidity providing executions for orders executed at or above \$1.00.

IEX believes that providing pricing incentives to liquidity providing orders will best incentivize the adoption of D-Limit orders. While a D-Limit order can take liquidity upon entry, IEX believes that its commercial success will be based on Members having

favorable experiences as liquidity adders, particularly for displayed liquidity providing

D-Limit orders. As the Commission noted in the D-Limit Approval Order:

[E]xchange functionality that protects resting displayed orders against adverse selection resulting from latency arbitrage will improve the execution quality experienced by market participants that post displayed liquidity and are affected by such adverse selection. This improved execution quality could encourage more displayed liquidity, which in turn, would contribute to fair and orderly markets and support the public price discovery process. Specifically, if sufficiently protected against being “picked off” when the conditions for latency arbitrage are present, long term investors will no longer experience those relatively poor executions and thus will have less incentive to avoid posting displayed orders on exchanges.<sup>19</sup>

IEX believes that targeting fee incentives to liquidity adders will enable Members to see for themselves the benefits of using the innovative D-Limit order type, while adding to the pool of displayed (as well as non-displayed) liquidity from which all market participants will benefit.

Specifically, IEX believes that the proposed fees are a narrowly tailored approach that is designed to increase liquidity on IEX, which would benefit investors in securities traded on IEX. Specifically, to the extent Members post more displayed D-Limit orders on IEX, price discovery would be enhanced drawing more natural trading interest to the public markets, which would deepen liquidity and dampen the impact of shocks from liquidity demand. The Exchange notes that other exchanges offer a diverse range of fee-based incentives to their members for trading activity that they believe incentivizes liquidity adding orders, and thereby improves market quality.<sup>20</sup>

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<sup>19</sup> See D-Limit Approval Order, supra note 9, 54443.

<sup>20</sup> Notably, several exchanges pay rebates to Members for liquidity adding orders, which means the exchanges actually pay Members to add liquidity. See, e.g., New York Stock Exchange Price List as of August 20, 2020 (offering free execution for liquidity adding orders, with rebates ranging from \$0.0000 to \$0.0030 per share executed),

Importantly, the Exchange is not proposing to offer a rebate, in that the proposed fee reduction will not be greater than the fee charged for executions on the Exchange. The Exchange will offer a discount to the fees charged for qualifying orders, but such discounts will not result in any net payments to Members for the execution of such orders. The proposed fees are designed to provide an alternative fee-based incentive to Members to utilize a new order type on IEX.

Finally, IEX notes that the affiliate aggregation for purposes of applying D-Limit fees and discounts is similar to pricing structures in place at other exchanges. For example, the New York Stock Exchange, Inc. (“NYSE”) pricing rules provide that “[f]or purposes of applying any provision of the Price List where the charge assessed, or credit provided, by the Exchange depends upon the volume of a member organization's activity, a member organization may request that the Exchange aggregate its eligible activity with the eligible activity of its affiliates.” The NYSE Price List also includes provisions regarding aggregation requests, and the timing thereof, that are substantially similar to those proposed in this rule change. Nasdaq Stock Market (“Nasdaq”) pricing rules contain virtually identical provisions.<sup>21</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>23</sup> of the Act, in

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[https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf); and Nasdaq Equity 7 Pricing Schedule (offering free execution for liquidity adding orders, with rebates ranging from \$0.00005 to \$0.0033 per share executed). See

<https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-equity-7>.

<sup>21</sup> See NYSE’s Price List, available at:

[https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf); see also Nasdaq Equities 7 Pricing Schedule, Section 127.

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

particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX members and persons using its facilities. Additionally, IEX believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5)<sup>24</sup> of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in facilitating transactions in securities; 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; and are not designed to permit unfair discrimination between customers, brokers, or dealers.

The Exchange believes that the proposed fees are consistent with the Act because they would be available to all Members on a fair, equal and nondiscriminatory basis. All Members, regardless of their technological sophistication, can enter D-Limit liquidity providing orders priced to execute at or above \$1.00.<sup>25</sup> Similarly, all Members, regardless of their technological sophistication, can enter liquidity providing D-Peg and M-Peg orders priced to execute at or above \$1.00. Thus, all Members are able to benefit from the proposed fees on a fair, equal and nondiscriminatory basis.

The proposed fees take a narrowly tailored approach, designed to maximize participation for the launch of D-Limit by incentivizing the entry of certain displayed and non-displayed liquidity adding D-Limit orders. As noted in the Purpose section, IEX understands that Members seeking to utilize the D-Limit order type may need to modify and test their trading strategies and order entry systems in order to do so, and the

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<sup>23</sup> 15 U.S.C. 78f(b)(4).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See D-Limit Approval Order, supra note 9, 54450 (“Because IEX will reprice all D-Limit orders without further action from the user, all users will benefit equally regardless of their technological capabilities and ability to take action within a prescribed period.”)

proposed fees are designed to provide a meaningful economic incentive for such efforts.

As discussed in the Purpose section, IEX believes that the proposed fees are narrowly tailored to incentivize Members to enter liquidity providing D-Limit, D-Peg and M-Peg orders on IEX that execute at or above \$1.00, which would have several benefits to investors in securities traded on IEX. First, to the extent Members post more displayed D-Limit orders on IEX, price discovery would be enhanced potentially drawing more natural trading interest to the public markets, which would deepen liquidity and dampen the impact of shocks from liquidity demand. Second, incentivizing the entry of both displayed and non-displayed liquidity adding orders should deepen the Exchange's liquidity pool and contribute to public price discovery, consistent with the goal of enhancing market quality. Third, to the extent that the proposed fees incentivize additional liquidity providing D-Peg and M-Peg orders that execute at the Midpoint Price<sup>26</sup> and at or above \$1.00, such orders will result in benefits to counterparties, offering price improvement over the prevailing national best bid and offer prices.<sup>27</sup> Finally, to the extent price discovery is enhanced and more orders are drawn to the public markets, orders executed on IEX will have the benefit of exchange transparency, regulation, and oversight. These benefits would generally apply to all Members, even if a Member elects to not use the D-Limit order type.

Additionally, IEX notes that it operates in an increasingly competitive and fragmented marketplace consisting of a large number of national securities exchanges and non-exchange venues that trade equity securities. As a relatively small market, IEX believes that meaningful pricing incentives are necessary to encourage market

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<sup>26</sup> See IEX Rule 1.160(t).

<sup>27</sup> See IEX Rule 1.160(u).

participants to utilize the new D-Limit order type and address the significant competitive challenges of attracting liquidity to the Exchange. While the Exchange believes that adding liquidity with a D-Limit order with less risk of adverse selection should provide an incentive for Members to use D-Limit, the Exchange also believes that offering Members the proposed fees will enhance such incentive.

The Exchange notes that other exchanges offer a diverse range of pricing incentives to their members for providing certain order flow. For example, Cboe BZX Exchange, Inc. offers free executions for orders that participate in its new Cboe Market Close, which it describes as a “competitive pricing structure designed to incentivize market participants to direct their [Market-On-Close] orders to the Cboe Market Close, which the Exchange believes would facilitate the execution of those orders....”<sup>28</sup> And several exchanges offer rebate tiers for liquidity adding orders, which increase in value as the member increases its volume of liquidity adding orders.<sup>29</sup> Furthermore, several exchanges use “cross-asset” incentives, which offer pricing incentives to members that submit different order types to the exchange.<sup>30</sup> Similarly, other exchanges have fee

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<sup>28</sup> See Securities Exchange Act Release No. 88487 (March 26, 2020), 85 FR 18290 (April 1, 2020) (SR-CboeBZX-2020-027).

<sup>29</sup> See e.g., “Nasdaq Growth Program,” Nasdaq Equity 7 Section 114 (paying a \$0.0025 per share rebate to a member that adds a daily average of 750,000 or more shares and also increases its volume of shares traded on Nasdaq in prior months by 20%; and paying a larger \$0.0027 per share rebate if that member increases its share of liquidity adding volume by at least 50% versus its August 2016 share of liquidity adding volume); see also NYSE Arca Equities Fee Schedule, Retail Order Step-Up Tiers 1-3 (paying rebates ranging from \$0.0035 to \$0.0037 per share for retail orders that provide displayed liquidity with the rebates increasing as the member submits more retail orders (both adding and taking) in any given month when compared to a prior period).

<sup>30</sup> See, e.g., NYSE Arca Equities Fee Schedule, Cross-Asset Tiers 1-2 (paying rebates of \$0.0031 per share and \$0.0030 per share, respectively, for adding more than 0.30% of consolidated average daily volume concurrent with an affiliate meeting certain volume thresholds on the NYSE Arca Options exchange). See [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf). See also, Cboe BZX Exchange, Inc. Cross-Asset Tape B Tier (paying a rebate of \$0.0031 per share for adding volume since February 2015 equal to or greater than 0.06% of total consolidated volume if the member also has an options market maker

structures that use trading in one order type to incentivize trading either in another order type or more generally, as well as coupling requirements of displayed and non-displayed volume to qualify for preferential pricing, that are analogous to IEX's proposal to provide discounts to certain D-Peg and M-Peg executions to incentive the use of D-Limit orders.<sup>31</sup> Additionally, other exchanges have fee structures that incentivize the posting of non-displayed liquidity adding orders, which is analogous to how the proposed fees incentivize non-displayed liquidity adding M-Peg and D-Peg orders, in addition to incentivizing liquidity adding D-Limit orders.<sup>32</sup> Finally, maker-taker exchanges pay rebates to members that add liquidity,<sup>33</sup> while taker-maker exchanges pay rebates to members that take liquidity, in each case to incentivize such order flow.<sup>34</sup>

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that added options customer volume equal to or greater than 1.00%), available at [http://markets.cboe.com/us/equities/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/).

<sup>31</sup> See Nasdaq Equities 7 Pricing Schedule, Section 118 (providing lower fees or higher rebates/credits for specified levels of volume, either generally or through the use of a particular order type if coupled with specified volume in other specified order types, including several examples of rebates tied to adding displayed liquidity and non-displayed liquidity at specified levels of volume). For example, Nasdaq pays a rebate of \$0.00295 per share for adding more than 0.70% of total consolidated volume ("TCV"), provided that at least 0.20% of the added TCV was done with midpoint and midpoint extended life orders, and the member also removed at least 1.10% of TCV). Similarly, Nasdaq pays a rebate of \$0.0027 per share for displayed quotes/orders that provide liquidity if the member also takes and provides specified levels of consolidated volume and provides a daily average of at least 800,000 shares of non-displayed liquidity during the month in question; see also NYSE Arca Equities Fee Schedule, Limit Non-Displayed Order Step Up Tier (paying rebates ranging from \$0.0004 to \$0.0020 per share for meeting certain thresholds of adding limit non-displayed liquidity and adding midpoint (non-displayed) liquidity). Similarly, NYSE Arca pays rebates ranging from \$0.0029 to \$0.0031 per share for orders that meet certain thresholds for adding displayed liquidity, removing liquidity, and participating in the exchange's closing auctions, including additional rebates of between \$0.0010 to \$0.0020 per share for adding liquidity with non-displayed midpoint orders.

<sup>32</sup> See Nasdaq Equities 7 Pricing Schedule, Section 118 (providing rebates of between \$0.0005 to \$0.0075 per share for adding non-displayed liquidity at specified levels of volume, provided that some of the added non-displayed liquidity was done with various combinations of midpoint and midpoint extended life orders).

<sup>33</sup> See *supra* note 20.

<sup>34</sup> Cboe EDGA pays a \$0.018 per share rebate for liquidity taking orders, see [https://markets.cboe.com/us/equities/membership/fee\\_schedule/edga/](https://markets.cboe.com/us/equities/membership/fee_schedule/edga/); Cboe BYX pays a \$0.005 per share rebate for liquidity taking orders, see

The proposed fees are designed to provide a simple, non-rebate incentive to market participants to enter certain liquidity providing D-Limit orders on IEX, through free executions and discounts on certain D-Peg and M-Peg orders.

The Exchange further believes that the proposed fees are consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees because all Members are eligible for incentive pricing on the same terms and conditions, and there are no restrictions on the use of impacted order types. Additionally, IEX believes that it is reasonable to incentivize Members to use certain D-Limit liquidity providing orders in view of the potential burdens on those Members that choose to adopt this new order type and the highly competitive market in which IEX operates, which provides myriad alternatives to Members. Furthermore, the Exchange believes that the proposed fees are an equitable allocation of fees because to the extent the incentive pricing results in increased liquidity on IEX, all market participants will benefit, irrespective of if the market participant is an IEX Member that submits certain liquidity adding D-Limit, D-Peg, and M-Peg orders. Accordingly, IEX believes that the proposed fees constitute an equitable allocation of fees.

Moreover, the Exchange believes that the proposal to cap the \$0.0002 discount on certain D-Peg and M-Peg orders executed by a Member (including any aggregated affiliates) at the number of D-Limit liquidity adding shares executed by that Member in the same month is reasonable, because the cap is designed to further incentivize Members to submit certain liquidity-adding D-Limit orders. Further, all Members will benefit from

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[https://markets.cboe.com/us/equities/membership/fee\\_schedule/byx/](https://markets.cboe.com/us/equities/membership/fee_schedule/byx/); and Nasdaq BX pays between \$0.0000 and \$0.0030 per share for liquidity taking orders, see Nasdaq BX Equity 7, <https://listingcenter.nasdaq.com/rulebook/bx/rules/bx-equity-7>.

the discount in the same manner based on the number of qualifying D-Limit liquidity adding shares they execute.

Finally, the Exchange believes that the proposed aggregation provision is consistent with the protection of investors and the public interest because it establishes a clear policy with respect to affiliate aggregation for fee purposes that is common among other exchanges, thereby promoting Members' understanding of the parameters of the D-Limit fee and discount structure and the efficiency of its administration. The proposed rule is equitable because all similarly situated members are subject to the proposed rules equally, and access to the Exchange is offered on fair and nondiscriminatory terms.

All Members seeking to aggregate their activity are subject to the same reasonable parameters, in accordance with a standard that recognizes an affiliation as of the month's beginning, or close in time to when the affiliation occurs, provided the Member submits a timely request. Moreover, the proposed billing aggregation language is reasonable because it establishes a standard for implementation of aggregation requests that is easy to administer and that reflects the need for the Exchange to review and approve aggregation requests while avoiding the complexities associated with proration of the bills of Members that become affiliated during the course of a month. The Exchange believes that this approach will thus simplify the process of billing for the Exchange and its Members and is substantially similar to aggregation standards adopted by other exchanges.<sup>35</sup>

The Exchange also believes that the proposed rule change avoids disparate treatment of Members that have divided their various business activities between separate

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<sup>35</sup> See supra note 21.

legal entities as compared to Members that operate those business activities within a single legal entity. The Exchange further notes that the aggregation provisions are reasonable and designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing with the rules across exchanges that govern the aggregation of certain activity for purposes of billing. In particular, as noted above, both Nasdaq and NYSE have substantially similar rules governing aggregation of activity for fee purposes.<sup>36</sup> Thus, the Exchange believes the proposed change does not present any unique or novel issues under the Act that have not already been considered by the Commission.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that the proposed fees would enhance competition and execution quality by increasing the Exchange's pool of both displayed and non-displayed liquidity, and to the extent that displayed liquidity increases, would contribute to the public price discovery process.

The Exchange does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act since competing venues use various pricing structures to incentivize market participants to add liquidity to their markets, including but not limited to paying rebates to liquidity providers.<sup>37</sup> The proposed fees are a means of providing such incentives without the use of rebates, as described in the Purpose and Statutory Basis

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<sup>36</sup> Id.

<sup>37</sup> See supra note 20.

sections. And, as noted in the Statutory Basis section, other exchanges have adopted similar pricing incentives for their current offerings. Moreover, subject to the SEC rule filing process, other exchanges could adopt a similar order type and fee incentive. Further, the Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues, if its fees are viewed as non-competitive.

The Exchange also 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. While Members that add liquidity using certain D-Limit orders (as well as certain D-Peg and M-Peg orders) will be subject to different fees based on this usage, those differences are not based on the type of Member entering orders but on whether the Member chose to submit certain liquidity providing D-Limit orders. As noted above, not only can any Member submit certain liquidity adding D-Limit orders, but every Member would benefit from the availability of more liquidity on the Exchange that the proposed fees are designed to incentivize.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>38</sup> of the Act.

At any time within 60 days of the filing of the proposed rule change, the

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<sup>38</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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>39</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-2020-14 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-IEX-2020-14. 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

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<sup>39</sup> 15 U.S.C. 78s(b)(2)(B).

(<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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2020-14 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>40</sup>

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<sup>40</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5 – Text of Proposed Rule Change

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

**Investors Exchange Fee Schedule**

Effective [April 22]October 1, 2020

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**Transaction fees**

- All fees identify cost per share executed unless otherwise specified.
- 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 Codes and Associated Fees table will apply.
- Executions below \$1.00 are assessed a fee of 0.30% of TDV unless the Fee Code Combination results in a FREE execution.
- 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).
- Certain executions of Discretionary Limit ("D-Limit"), Discretionary Peg ("D-Peg") and Midpoint Peg ("M-Peg") orders are subject to the following fees in lieu of those otherwise specified unless a lower fee applies, with the exception of executions below \$1.00, which will continue to be assessed a fee of 0.30% of TDV unless the Fee Code Combination results in a FREE execution:
  - A D-Limit order that provides liquidity results in a FREE execution.
  - D-Peg and M-Peg orders that provide liquidity will be subject to a discount of \$0.0002 per share from the fee that would otherwise be charged for the number of shares of such orders executed up to the number of shares of D-Limit orders that provided liquidity during such time period by the same Member, measured on a monthly basis.
  - IEX will aggregate all of a Member's MPIDs to calculate each Member's D-Peg, M-Peg, and D-Limit liquidity providing orders on a monthly basis. In addition, a Member may request that the Exchange aggregate its activity with activity of such Member's affiliated Members. A Member requesting aggregation of affiliate activity is required to certify to the Exchange the affiliate status of Members whose activity it seeks to aggregate prior to receiving approval for aggregation and inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange shall review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity. The Exchange shall approve a request unless it determines that the certification is not accurate. For purposes of applying the D-Limit fees and associated discounts for certain D-Peg and M-Peg orders, references to Member shall include the Member and any of its affiliates that have

been approved for aggregation, and the term “affiliate” shall mean any Member under 75% common ownership or control of that Member.

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