

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 <input type="checkbox"/>	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 adopt Rule 11.340(b) to set forth the requirements for the collection and transmission of data pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program.

**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 *	<input type="text" value="Claudia"/>	Last Name *	<input type="text" value="Crowley"/>
Title *	<input type="text" value="Chief Regulatory Officer"/>		
E-mail *	<input type="text" value="claudia.crowley@iextrading.com"/>		
Telephone *	<input type="text" value="(646) 343-2041"/>	Fax	<input type="text"/>

**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	<input type="text" value="07/28/2016"/>	Chief Regulatory Officer
By	<input type="text" value="Claudia Crowley"/>	<input type="text"/>
		(Name *)

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 Rule 11.340, which is currently reserved, to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).<sup>3</sup> Specifically, the Exchange proposes to adopt Rule 11.340(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission for the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (“BZX”) to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.<sup>4</sup> The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>6</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) Not applicable.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

<sup>4</sup> See Securities Exchange Act Release Nos. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR-BATS-2015-102); and 77310 (March 7, 2016) (notice for comment and immediate effectiveness of SR-BATS-2016-27).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(a).

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

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Sophia Lee  
General Counsel  
Investors Exchange LLC  
646-343-2040

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

a. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act<sup>7</sup> and Rule 608 of Regulation NMS thereunder,<sup>8</sup> the Plan to Implement a Tick Size Pilot Program ("Pilot").<sup>9</sup> The Participants filed the Plan to comply with an order issued by the

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<sup>7</sup> 15 U.S.C. 78k-1

<sup>8</sup> 17 CFR 242.608.

<sup>9</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

Commission on June 24, 2014.<sup>10</sup> The Plan<sup>11</sup> was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>12</sup> On November 6, 2015, the Commission granted the Participants an exemption from implementing the Plan until October 3, 2016.<sup>13</sup> An amendment to the Plan adding IEX as a Participant will be filed with the Commission shortly.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require IEX Members<sup>14</sup> to comply with the applicable data collection requirements of the Plan.<sup>15</sup>

The Pilot will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a control group of approximately 1,400 Pilot Securities and three test groups

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<sup>10</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>11</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>12</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4-657) (“Approval Order”).

<sup>13</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657) (Order Granting Exemption from Compliance with the National Market System Plan to Implement a Tick Size Pilot Program).

<sup>14</sup> An IEX Member is “...any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a Member of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company, or other organization that is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.” See IEX Rule 1.160(s).

<sup>15</sup> The Exchange proposes Supplementary Material .01 to Rule 11.340 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

with 400 Pilot Securities in each (selected by a stratified random sampling process).<sup>16</sup>

During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments.

Pilot Securities in the first test group (“Test Group One”) will be quoted in the \$0.05 minimum increments but will continue to trade at any price increment that is currently

permitted.<sup>17</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.<sup>18</sup>

Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the “Trade-at” requirements to prevent price matching by a market participant that is not displaying at a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>19</sup> In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS<sup>20</sup> will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and

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<sup>16</sup> See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

<sup>17</sup> See Section VI(B) of the Plan.

<sup>18</sup> See Section VI(C) of the Plan.

<sup>19</sup> See Section VI(D) of the Plan.

<sup>20</sup> 17 CFR 242.611.

market dynamics (e.g., rates and speed of order cancellations).<sup>21</sup> The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market maker profits and any corresponding changes in the liquidity of small-capitalization securities.<sup>22</sup>

#### Compliance with the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.<sup>23</sup> Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers<sup>24</sup> to submit a variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, e.g., from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.<sup>25</sup> Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

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<sup>21</sup> See Approval Order, 80 FR at 27543.

<sup>22</sup> Id.

<sup>23</sup> The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved paragraph (a) for such rules.

<sup>24</sup> The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.600(b).

<sup>25</sup> 17 CFR 242.605.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer (“NBBO”) quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is a Designated Examining Authority (“DEA”) for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is therefore proposing Rule 11.340(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 11.340(b) is substantially similar to proposed rule changes of BZX that were recently approved or published by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.<sup>26</sup>

Proposed Rule 11.340(b)(1) requires that a Member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of

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<sup>26</sup> See supra, note 4.

Items I and II to Appendix B of the Plan, and a Member that is a Market Maker<sup>27</sup> shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 11.340(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange website on a monthly basis at no charge and will not identify the Member that generated the data.

On June 17, 2016 the Commission granted to IEX an application for registration as a national securities exchange under Section 6 of the Act.<sup>28</sup> IEX intends to launch exchange operations during a security-by-security phase-in period scheduled to begin on August 19, 2016. During the phase-in period, securities will transition from being available for trading on the Alternative Trading System operated by the Exchange's affiliate IEX Services LLC ("IEX ATS"), to the Exchange. Once a security becomes

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<sup>27</sup> The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

<sup>28</sup> See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

available for trading on the Exchange it will no longer be available for trading on the IEX ATS.<sup>29</sup> The IEX ATS currently reports data for Pilot Securities to FINRA pursuant to FINRA Rule 6191(b). During the phase-in period, the IEX ATS will continue to report data to FINRA for Pilot Securities that have not yet transitioned to the Exchange. Data for Pilot Securities that have transitioned to the Exchange will be reported to the SEC pursuant to IEX Rule 11.340(b), as proposed. Accordingly, reporting for Pilot Securities will take place as appropriate based on each Pilot Security's status as either available for trading on the IEX ATS or the Exchange.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 11.340(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 11.340(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately

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<sup>29</sup> See, <https://iextrading.com/trading/alerts/2016/028/#exchange-transition> for detailed information on the transition from the IEX ATS to Exchange.

preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some Members may have a DEA that is not a Participant to the Plan and that such non-Participant DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not be required to collect the required data and may not establish procedures for those Members for which it acts as DEA to report the data required under subparagraphs (b)(3)(A) of Rule 11.340 and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 11.340 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 11.340(b) to FINRA, which is a Participant to the Plan and will collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.<sup>30</sup>

Proposed Rule 11.340(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 11.340(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall

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<sup>30</sup> FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Technical Specification on the FINRA website at <http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf>.

also make such data publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 11.340(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 11.340(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan, as modified by Paragraph (b)(5) with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires Members to provide such data in a format required by their

DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 11.340, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 11.340 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 11.340(b) to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.<sup>31</sup>

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers. Therefore, the Exchange proposes to adopt Rule 11.340(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar

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<sup>31</sup> Id.

days following month end for: (i) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange notes that, as of the date of this filing, it does not have any registered Market Makers and therefore will not have daily Market Maker registration statistics to collect or transmit to the SEC or to FINRA pursuant to Item III of Appendix B of the Plan unless and until such time as it has registered Market Makers.

The Exchange is also proposing, through Supplementary Material, to clarify other aspects of the data collection requirements.<sup>32</sup> Proposed Supplementary Material .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a “yes/no” field relating to the Retail Investor Order flag. The Exchange is proposing Supplementary Material .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report “y” to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “n” for all other instances.<sup>33</sup> The Exchange believes that requiring the identification of a Retail Investor

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<sup>32</sup> The Exchange is also proposing Supplementary Material .01 to Rule 11.340 to clarify that certain enumerated terms used throughout Rule 11.340 shall have the same meaning as set forth in the Plan.

<sup>33</sup> FINRA, on behalf of the Plan Participants at the time submitted a letter to the Commission requesting exemption from certain provisions of the Plan related to data collection. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission (“Exemption Request”). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX, as of February 10, 2016, a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. See e.g., letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated February 10, 2016 (“Exemption Letter”). On April 4, 2016, the Commission granted the National Stock Exchange, Inc. (“NSX”), which was not a Plan Participant as of February 10, 2016, comparative limited exemption from such requirements. See, letter from John C. Roeser,

Orders only where the exception may apply (i.e., Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Supplementary Material .03 requires that Members populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.<sup>34</sup> Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor (“SIP”) calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock’s reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (e.g., the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of “Y” to their DEA when the

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Associate Director, Division of Trading and Markets, Commission to James Buckley, Chief Regulatory Officer, NSX, dated April 4, 2016. IEX was not a Plan Participant at the time that such exemptions were requested or granted and respectfully requests that the Commission grant to it the same exemptions that the Commission granted to the other Plan Participants.

<sup>34</sup> See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Limit-Up Limit-Down Plan”).

ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of “N” to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Supplementary Material .03 also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in dually-listed Pilot and Pre-Pilot Securities as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the Member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan’s quoting and trading requirements, and could otherwise compromise the integrity of the data.

Supplementary Material .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).<sup>35</sup> The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes

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<sup>35</sup> Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.<sup>36</sup>

Supplementary Material .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)-(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Supplementary Material

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<sup>36</sup> On February 10, 2016, the Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra, note 30. IEX requests that the Commission grant to it this same exemption.

.05.<sup>37</sup> This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Supplementary Material .06 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-thequote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Participants have determined that it is appropriate to include separate categories for both not held orders and auction orders for purposes of Appendix B reporting. The Exchange is therefore proposing Supplementary Material .06 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (20);<sup>38</sup> and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held

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<sup>37</sup> On February 10, 2016, the Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra*, note 30. IEX requests that the Commission grant to it this same exemption.

<sup>38</sup> The Exchange notes that, as of the date of this filing, it does not offer order types specifically defined as “not held,” “clean cross,” or “auction order.”

orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Supplementary Material .07 to clarify the scope of the Plan as it relates to Members that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a Member that only executes orders otherwise than on a national securities exchange for the purpose of: (1) correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order<sup>39</sup> shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Supplementary Material .09 to make this clarification.

The Exchange is proposing Supplementary Material .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its website pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.<sup>40</sup>

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<sup>39</sup> The Exchange notes that where a Member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would be subject to Appendix B of the Plan.

<sup>40</sup> In the Approval Order, the SEC noted that the Pilot shall be implemented within one year of the date of publication, *i.e.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. The SEC subsequently extended the implementation date approximately five months to October 3, 2016. *See supra*, note 12. *See* also Letter dated November 4, 2015 from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission

The Exchange is proposing Supplementary Material .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out (“LIFO”)-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Supplementary Material .09 to make this change.<sup>41</sup> The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the

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<sup>41</sup> (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation date of the Tick Size Pilot until six months thereafter). Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.<sup>42</sup>

Finally, the Exchange is proposing Supplementary Material .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing Supplementary Material .09 to define “Pre-Pilot Data Collection Securities” as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day

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<sup>42</sup> The Commission granted BZX, as of February 10, 2016, an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra, note 30. IEX requests that the Commission grant to it this same exemption.

that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a PrePilot Security.

#### Implementation Date

The proposed rule change will be effective to coincide with IEX's launch of exchange operations during a security-by-security phase-in period.

#### b. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>43</sup> in general and furthers the objectives of Sections 6(b)(5) of the Act<sup>44</sup> in particular, in that it is designed 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.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the

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

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

objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

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>45</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>46</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

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<sup>45</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>46</sup> 17 CFR 240.19b-4.

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>47</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>48</sup> because it would not significantly affect the protection of investors or the public interest; rather, the proposed rule change will benefit investors because it ensures that all Members are able to report the data required by Appendices B and C to the Plan and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. As noted above, in approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies. Ensuring that the data required by Appendices B and C to the Plan is properly reported by Trading Centers will facilitate the analysis of the effects of the Pilot on liquidity, execution quality, market maker activity, competition between trading venues, transparency, and market dynamics. In addition, the proposed rule change is substantially similar to proposed rule changes by BZX that were recently approved or published by the Commission.<sup>49</sup> Therefore, the proposed rule change does not present any unique issues not previously considered by the Commission. Based on the foregoing, the Exchange has designated this rule filing as “non-

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

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

<sup>49</sup> See supra, note 4.

controversial” under Section 19(b)(3)(A) of the Act<sup>50</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>51</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. The data collection requirements of the Plan became effective on April 4, 2016, six months prior to October 3, 2016, the date upon which the Participants must implement the Plan.<sup>52</sup> Waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rule change to coincide with IEX’s launch of exchange operations during a security-by-security phase-in period.

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>53</sup>

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

Proposed Rule 11.340(b) is based on BZX Rule 11.27(b).

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

Not applicable.

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<sup>50</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>51</sup> 17 CFR 240.19b-4.

<sup>52</sup> See *supra*, note 12.

<sup>53</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-2016-07)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Rule 11.340(b) to Set Forth the Requirements for the Collection and Transmission of Data Pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program.

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”), and Rule 19b-4 thereunder, Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend Rule 11.340, which is currently reserved, to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

Specifically, the Exchange proposes to adopt Rule 11.340(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.

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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.

The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission for the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (“BZX”) to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act. 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

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York

Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc. (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act<sup>4</sup> and Rule 608 of Regulation NMS thereunder,<sup>5</sup> the Plan to Implement a Tick Size Pilot Program (“Pilot”).<sup>6</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>7</sup> The Plan<sup>8</sup> was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>9</sup> On November 6, 2015, the Commission granted the Participants an exemption from implementing the Plan until October 3, 2016.<sup>10</sup> An amendment to the Plan adding IEX as a Participant will be filed with the Commission shortly.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require IEX Members<sup>11</sup> to comply with the applicable data collection requirements of the Plan.<sup>12</sup>

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<sup>4</sup> 15 U.S.C. 78k-1

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>7</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>8</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>9</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4-657) (“Approval Order”).

<sup>10</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657) (Order Granting Exemption from Compliance with the National Market System Plan to Implement a Tick Size Pilot Program).

<sup>11</sup> An IEX Member is “...any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a Member of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company, or other organization that is a registered broker or dealer

The Pilot will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).<sup>13</sup> During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in the \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.<sup>14</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.<sup>15</sup> Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the “Trade-at” requirements to prevent price matching by a market participant that is not displaying at a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>16</sup> In addition to the exceptions provided under Test Group

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pursuant to Section 15 of the Act, and which has been approved by the Exchange.” See IEX Rule 1.160(s).

<sup>12</sup> The Exchange proposes Supplementary Material .01 to Rule 11.340 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

<sup>13</sup> See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

<sup>14</sup> See Section VI(B) of the Plan.

<sup>15</sup> See Section VI(C) of the Plan.

<sup>16</sup> See Section VI(D) of the Plan.

Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS<sup>17</sup> will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and market dynamics (e.g., rates and speed of order cancellations).<sup>18</sup> The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market maker profits and any corresponding changes in the liquidity of small-capitalization securities.<sup>19</sup>

#### Compliance with the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.<sup>20</sup> Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers<sup>21</sup> to submit a variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the

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<sup>17</sup> 17 CFR 242.611.

<sup>18</sup> See Approval Order, 80 FR at 27543.

<sup>19</sup> Id.

<sup>20</sup> The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved paragraph (a) for such rules.

<sup>21</sup> The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.600(b).

cumulative number of shares executed within specific time increments, e.g., from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.<sup>22</sup> Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer (“NBBO”) quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is a Designated Examining Authority (“DEA”) for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

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<sup>22</sup> 17 CFR 242.605.

The Exchange is therefore proposing Rule 11.340(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 11.340(b) is substantially similar to proposed rule changes of BZX that were recently approved or published by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.<sup>23</sup>

Proposed Rule 11.340(b)(1) requires that a Member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a Member that is a Market Maker<sup>24</sup> shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 11.340(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot

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<sup>23</sup> See Securities Exchange Act Release Nos. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR-BATS-2015-102); and 77310 (March 7, 2016) (notice for comment and immediate effectiveness of SR-BATS-2016-27).

<sup>24</sup> The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange website on a monthly basis at no charge and will not identify the Member that generated the data.

On June 17, 2016 the Commission granted to IEX an application for registration as a national securities exchange under Section 6 of the Act.<sup>25</sup> IEX intends to launch exchange operations during a security-by-security phase-in period scheduled to begin on August 19, 2016. During the phase-in period, securities will transition from being available for trading on the Alternative Trading System operated by the Exchange's affiliate IEX Services LLC ("IEX ATS"), to the Exchange. Once a security becomes available for trading on the Exchange it will no longer be available for trading on the IEX ATS.<sup>26</sup> The IEX ATS currently reports data for Pilot Securities to FINRA pursuant to FINRA Rule 6191(b). During the phase-in period, the IEX ATS will continue to report data to FINRA for Pilot Securities that have not yet transitioned to the Exchange. Data for Pilot Securities that have transitioned to the Exchange will be reported to the SEC pursuant to IEX Rule 11.340(b), as proposed. Accordingly, reporting for Pilot Securities will take place as appropriate based on each Pilot Security's status as either available for trading on the IEX ATS or the Exchange.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker engaging in trading activity on a Trading Center operated by the Participant. The

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<sup>25</sup> See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

<sup>26</sup> See, <https://iextrading.com/trading/alerts/2016/028/#exchange-transition> for detailed information on the transition from the IEX ATS to Exchange.

Exchange is therefore proposing Rule 11.340(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 11.340(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some Members may have a DEA that is not a Participant to the Plan and that such non-Participant DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not be required to collect the required data and may not establish procedures for those Members for which it acts as DEA to report the data required under subparagraphs (b)(3)(A) of Rule 11.340 and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 11.340 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 11.340(b) to

FINRA, which is a Participant to the Plan and will collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.<sup>27</sup>

Proposed Rule 11.340(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 11.340(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to

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<sup>27</sup> FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Technical Specification on the FINRA website at <http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf>.

total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 11.340(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 11.340(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan, as modified by Paragraph (b)(5) with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires Members to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 11.340, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 11.340 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 11.340(b) to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to

collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.<sup>28</sup>

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers. Therefore, the Exchange proposes to adopt Rule 11.340(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange notes that, as of the date of this filing, it does not have any registered Market Makers and therefore will not have daily Market Maker registration statistics to collect or transmit to the SEC or to FINRA pursuant to Item III of Appendix B of the Plan unless and until such time as it has registered Market Makers.

The Exchange is also proposing, through Supplementary Material, to clarify other aspects of the data collection requirements.<sup>29</sup> Proposed Supplementary Material .02

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<sup>28</sup>

Id.

<sup>29</sup>

The Exchange is also proposing Supplementary Material .01 to Rule 11.340 to clarify that certain enumerated terms used throughout Rule 11.340 shall have the same meaning as set forth in the Plan.

relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a “yes/no” field relating to the Retail Investor Order flag. The Exchange is proposing Supplementary Material .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report “y” to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “n” for all other instances.<sup>30</sup> The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (i.e., Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Supplementary Material .03 requires that Members populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.<sup>31</sup> Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor (“SIP”) calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock’s

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<sup>30</sup> FINRA, on behalf of the Plan Participants at the time submitted a letter to the Commission requesting exemption from certain provisions of the Plan related to data collection. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission (“Exemption Request”). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX, as of February 10, 2016, a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. See e.g., letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated February 10, 2016 (“Exemption Letter”). On April 4, 2016, the Commission granted the National Stock Exchange, Inc. (“NSX”), which was not a Plan Participant as of February 10, 2016, comparative limited exemption from such requirements. See, letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission to James Buckley, Chief Regulatory Officer, NSX, dated April 4, 2016. IEX was not a Plan Participant at the time that such exemptions were requested or granted and respectfully requests that the Commission grant to it the same exemptions that the Commission granted to the other Plan Participants.

<sup>31</sup> See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Limit-Up Limit-Down Plan”).

reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (e.g., the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of “Y” to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of “N” to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Supplementary Material .03 also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in dually-listed Pilot and Pre-Pilot Securities as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution;

or (3) was fully or partially directed to a foreign venue at the discretion of the Member.

The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

Supplementary Material .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).<sup>32</sup> The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will

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<sup>32</sup> Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

contribute to a meaningful analysis of the Pilot by producing more granular data on these points.<sup>33</sup>

Supplementary Material .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)-(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Supplementary Material .05.<sup>34</sup> This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Supplementary Material .06 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-thequote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Participants have determined that it is appropriate to include separate categories for both not held orders and auction orders for purposes of Appendix B reporting. The Exchange is therefore proposing Supplementary Material .06 to provide that not held orders shall be

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<sup>33</sup> On February 10, 2016, the Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra, note 30. IEX requests that the Commission grant to it this same exemption.

<sup>34</sup> On February 10, 2016, the Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra, note 30. IEX requests that the Commission grant to it this same exemption.

included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (20);<sup>35</sup> and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Supplementary Material .07 to clarify the scope of the Plan as it relates to Members that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a Member that only executes orders otherwise than on a national securities exchange for the purpose of: (1) correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order<sup>36</sup> shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Supplementary Material .09 to make this clarification.

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<sup>35</sup> The Exchange notes that, as of the date of this filing, it does not offer order types specifically defined as "not held," "clean cross," or "auction order."

<sup>36</sup> The Exchange notes that where a Member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would be subject to Appendix B of the Plan.

The Exchange is proposing Supplementary Material .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its website pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.<sup>37</sup>

The Exchange is proposing Supplementary Material .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Supplementary Material .09 to make this change.<sup>38</sup> The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported

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<sup>37</sup> In the Approval Order, the SEC noted that the Pilot shall be implemented within one year of the date of publication, *i.e.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. The SEC subsequently extended the implementation date approximately five months to October 3, 2016. *See supra*, note 9. *See* also Letter dated November 4, 2015 from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation date of the Tick Size Pilot until six months thereafter).

<sup>38</sup> Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.<sup>39</sup>

Finally, the Exchange is proposing Supplementary Material .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing Supplementary Material .09 to define “Pre-Pilot Data Collection Securities” as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and

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<sup>39</sup> The Commission granted BZX, as of February 10, 2016, an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra, note 30. IEX requests that the Commission grant to it this same exemption.

ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a PrePilot Security.

#### Implementation Date

The proposed rule change will be effective to coincide with IEX's launch of exchange operations during a security-by-security phase-in period.

#### 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>40</sup> in general and furthers the objectives of Sections 6(b)(5) of the Act<sup>41</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in

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

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

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.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

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>42</sup> of the Act and Rule 19b-4(f)(6)<sup>43</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>44</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>45</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 to the extent necessary so that the proposal may become operative at the time of the launch of its operation as a national securities exchange.

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

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<sup>42</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>43</sup> 17 CFR 240.19b-4(f)(6).

<sup>44</sup> 17 CFR 240.19b-4(f)(6).

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

19(b)(2)(B)<sup>46</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-2016-07 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.

All submissions should refer to File Number SR-IEX-2016-03. 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

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<sup>46</sup> 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2016-07 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>47</sup>

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<sup>47</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.

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Rule 11.340. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot

[Reserved]

(a) Compliance with Quoting and Trading Restrictions

(1) Reserved.

(b) Compliance with Data Collection Requirements

(1) Policies and Procedures Requirement. A Member that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II of Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

(2) The Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:

(A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) Each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

(C) The Exchange also shall make such data publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Member that generated the data.

(3) Daily Market Maker Participation Statistics Requirement

(A) A Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot

Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

(i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(ii) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (3)(A) above to the Financial Industry Regulatory Authority, Inc. (“FINRA”). Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 in accordance with paragraphs (3)(A)(i) and (ii) above.

(C) The Exchange shall transmit the data collected by the DEA or FINRA pursuant to paragraphs (3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

#### (4) Market Maker Profitability

(A) A Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:

(i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (4)(A) above to FINRA. Market Makers shall transmit such data in a

format required by FINRA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in accordance with paragraphs (4)(A)(i) and (ii) above.

(5) Market Maker Registration Statistics. The Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for:

(A) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

...Supplementary Material...

.01 The terms used in this Rule 11.340 shall have the same meaning as provided in the Plan, unless otherwise specified.

.02 For purposes of the reporting requirement in Appendix B.II.(n), a Trading Center shall report “Y” to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “N” in all other instances.

.03 For purposes of Appendix B.I, the field “Affected by Limit-Up Limit-Down bands” shall be included. A Trading Center shall report a value of “Y” to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down (LULD) bands in effect at the time of order receipt. A Trading Center shall report a value of “N” to their DEA when the ability of an order to execute has not been affected by the LULD bands in effect at the time of order receipt. For purposes of Appendix B.I, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) fully executed domestically or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) fully or partially directed to a foreign venue at the discretion of the Member.

.04 For purposes of Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22), the time ranges shall be changed as follows:

(a) Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt;

(b) Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt;

(c) Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and

(d) Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

.05 For purposes of Appendix B.I.a(31)-(33), the relevant measurement is the time of order receipt.

.06 For purposes of Appendix B, the following order types and numbers shall be included and assigned the following numbers: “not held” orders (18); clean cross orders (19); auction orders (20); and orders that cannot otherwise be classified, including orders received when the NBBO is crossed (21).

.07 A Member shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that Member only executes orders otherwise than on a national securities exchange for the purpose of: (i) correcting a bona fide error related to the execution of a customer order; (ii) purchases a security from a customer at a nominal price solely for purposes of liquidating the customer’s position; or (iii) completing the fractional share portion of an order.

.08 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make certain data publicly available on the Exchange’s or DEA’s web site pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period.

.09 For purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant also shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit), and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

.10 “Pre-Pilot Data Collection Securities” are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning

six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

.11 This Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).