

Required fields are shown with yellow backgrounds and asterisks.

Filing by Investors' Exchange LLC  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <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 \*).

**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 \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)

Date  By  (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 modify its Fee Schedule, pursuant to IEX Rule 15.110(a) to adopt pricing for orders that execute pursuant to Rule 11.231 (Regular Market Session Opening Process for Non-IEX-Listed Securities). Changes to the Fee Schedule pursuant to this proposal are effective upon filing, and will be operative once the Exchange begins conducting the Regular Market Session Opening Process for Non-IEX-Listed Securities (the “Opening Process”).<sup>3</sup>

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

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

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the

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

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

<sup>3</sup> See, IEX Trader Alert #2017-027 available at <https://www.iextrading.com/trading/alerts/2017/027/>.

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

The Exchange recently filed and the Commission approved a proposed rule change to Rule 11.231, which modified the Opening Process for non-IEX-listed securities.<sup>4</sup> The Exchange proposes to update its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to add a new Fee Code "X" to identify the fee applicable to certain orders that execute in the Opening Process. More specifically, orders that execute in the Opening Process will receive the new Fee Code X on execution reports as follows:

- Execution reports for non-displayed orders resting on the Continuous Order Book that execute in the Opening Process will receive new Fee Code X rather than Fee Code I.<sup>5</sup>
- Execution reports for displayed orders resting on the Continuous Order Book that

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<sup>4</sup> See Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017) (SR-IEX-2017-11).

<sup>5</sup> The Exchange notes that orders taking or adding non-displayed liquidity prior to or after the Opening Process, will continue to receive Fee Close I, either alone or in conjunction with other applicable Fee Codes.

execute in the Opening Process will continue to receive Fee Code L and will also receive new Fee Code X.

- Execution reports for all orders on the Cross Book<sup>6</sup> that execute in the Opening Process will receive new Fee Code X.

The Exchange is proposing to charge fees that are analogous to existing fees for orders that execute in the Opening Process. Accordingly, non-displayed orders on the Continuous Order Book and orders on the Cross Book that are executed in the Opening Process will receive Fee Code X on their execution reports and will be subject to a fee of \$0.0009 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00). Further, orders that were displayed on the Continuous Order Book during the Pre-Market Session<sup>7</sup> that are executed in the Opening Process will receive new Fee Code X and existing Fee Code L, and will not be charged a fee because, pursuant to the IEX Fee Schedule, to the extent a Member receives multiple Fee Codes on an execution, the lower fee shall apply.<sup>8</sup>

The Exchange notes that the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity, and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry are not applicable to the Opening Process. As discussed below in the Statutory Basis section, the Opening Process is a bulk execution without explicit counterparties.

(b) Statutory Basis

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<sup>6</sup> See Rule 11.231(a).

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

<sup>8</sup> See IEX Fee Schedule, Transaction Fees, bullet three.

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>9</sup> of the Act in general, and furthers the objectives of Sections 6(b)(4)<sup>10</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

IEX believes that its proposed pricing for the Opening Process is reasonable and equitable because the Exchange is proposing to charge fees analogous to those already in place for orders executed on the Exchange during continuous trading,<sup>11</sup> while also accounting for orders on the Cross Book executed in the Opening Process. Specifically, non-displayed orders resting on the Continuous Order Book during the Pre-Market Session that are executed in the Opening Process, as well as orders on the Cross Book that are executed in the Opening Process, will be charged the Opening Match Fee (which is equal to the existing Non-Displayed Match Fee), while displayed orders on the Continuous Order Book in the Pre-Market Session executed in the Opening Process will be subject to the existing Displayed Match Fee.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge the Opening Match Fee (which is equal to the existing Non-Displayed Match Fee) to orders on the Cross Book that are executed in the Opening Process,

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See Securities Exchange Act Release No. 78550 (August 11, 2016), 81 FR 54873 (August 17, 2016) (SR-IEX-2016-09).

because such orders (regardless of display instruction) are queued and not displayed prior to or during the Opening Process.<sup>12</sup> Furthermore, as noted above, such fee is consistent with the fee currently charged by the Exchange for taking and providing non-displayed liquidity.

While the Displayed Match Fee applicable to executions during continuous trading also applies to a non-displayed order that removes liquidity from a displayed resting order as counterparty, in the context of the Opening Process (which is a bulk execution of multiple buy and sell orders at a single price), the Exchange does not believe that it is appropriate to provide the Displayed Match Fee to non-displayed orders that execute in the Opening Process because there are no explicit counterparties in a bulk execution. Similarly, the Exchange does not believe that the exception to the Non-Displayed Match Fee for displayable orders that take resting interest upon entry is applicable in the context of the Opening Process since such orders are not able to remove resting interest on entry in the Opening Process, because they are either queued on the Cross Book and not displayed, or resting displayed on the Continuous Order Book.<sup>13</sup> Furthermore, as noted above the Opening Process is a bulk execution of multiple buy and sell orders at a single price, and thus there are no counterparties to distinguish between liquidity provider and liquidity takers, or their respective display status.<sup>14</sup>

IEX also believes that it is appropriate, reasonable, and consistent with the Act

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<sup>12</sup> The Exchange notes that to the extent such orders are unexecuted after the Opening Process, the Exchange would display such orders consistent with their display instructions.

<sup>13</sup> The Exchange notes that it is possible for a displayed order to remove non-displayed liquidity in the Pre-Market Session; however, such execution would not be part of the Opening Process, and would be subject to the exchanges existing fee schedule.

<sup>14</sup> See Rule 11.231(a).

not to charge a fee for the execution of an order that was displayed on the Continuous Order Book during the Pre-Market Session prior to the Opening Process. As with the existing fee structure for execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery, and consistent with the overall goal of enhancing market quality. IEX believes that, as with the existing Displayed Match Fee, not charging a fee for such a previously displayed order is equitable and not unfairly discriminatory because it is designed to facilitate execution of, and enhance trading opportunities for, displayable orders, thereby further incentivizing entry of displayed orders.

Further, the Exchange notes that the proposed fees are nondiscriminatory because they will apply uniformly to all Members and all Members have the opportunity to submit both displayed and non-displayed orders for execution in the Opening Process. In addition, the Exchange believes that the proposed fees for the Opening Process are appropriate, reasonable, and consistent with the Act, because such fees are within the range of transaction charged by other exchanges for the opening process for non-listed securities.<sup>15</sup> Further, although orders that execute in the Opening Process may be subject to different fees, for the reasons discussed in the Purpose section, the Exchange notes that

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<sup>15</sup> For example, the Nasdaq Stock Market charges fees ranging from \$0.0015 - \$0.00085 for orders executed in the Nasdaq Opening Cross, including capping such fees at \$35,000 per month for certain members, which includes crosses for listed and non-listed securities (see, <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>). Similarly, Bats EDGX Exchange charges \$0.0010 for orders executed in the EDGX opening or re-opening process for non-listed securities priced above \$1.00 (see, [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/)).



other exchanges also charge differential pricing for orders that execute in their opening process.<sup>16</sup>

Additionally, the Exchange believes that its proposed Fee Code X, to be provided on execution reports, will provide transparency and predictability to Members as to the applicable transaction fees, because Members can determine which Fee Code is applicable to the execution of a particular order in the Opening Process.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Further, IEX believes that its proposal does not raise any new or novel issues that have not previously been considered by the Commission in connection with the existing IEX fees or the fees of other national securities exchanges.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and hopefully draw additional volume to the

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<sup>16</sup> Id.

Exchange for the Opening Process. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition of Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed in some circumstances, these different fees are not based on the type of Member entering the orders that execute in the Opening Process but on the type of order entered and all Members can submit any type of order. Further, the proposed fees are intended to encourage market participants to bring increased volume to the Exchange, which benefits all market participants.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>17</sup> IEX has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>18</sup>

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

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

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5 – Text of Proposed Rule Change.

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<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2017-28)

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

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

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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) to adopt pricing for orders that execute pursuant to Rule 11.231 (Regular Market Session Opening Process for Non-IEX-Listed Securities). Changes to the Fee Schedule pursuant to this proposal are effective upon filing, and will be operative once the Exchange begins conducting the Regular Market

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

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

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

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

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

Session Opening Process for Non-IEX-Listed Securities (the “Opening Process”).<sup>6</sup> The text of the proposed rule change is available at the Exchange’s website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange recently filed and the Commission approved a proposed rule change to Rule 11.231, which modified the Opening Process for non-IEX-listed securities.<sup>7</sup> The Exchange proposes to update its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to add a new Fee Code “X” to identify the fee applicable to certain orders that execute in the Opening Process. More specifically, orders that execute in the Opening Process will receive the new Fee Code X on execution reports as follows:

- Execution reports for non-displayed orders resting on the Continuous Order Book

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<sup>6</sup> See, IEX Trader Alert #2017-027 available at <https://www.iextrading.com/trading/alerts/2017/027/>.

<sup>7</sup> See Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017) (SR-IEX-2017-11).

that execute in the Opening Process will receive new Fee Code X rather than Fee Code I.<sup>8</sup>

- Execution reports for displayed orders resting on the Continuous Order Book that execute in the Opening Process will continue to receive Fee Code L and will also receive new Fee Code X.
- Execution reports for all orders on the Cross Book<sup>9</sup> that execute in the Opening Process will receive new Fee Code X.

The Exchange is proposing to charge fees that are analogous to existing fees for orders that execute in the Opening Process. Accordingly, non-displayed orders on the Continuous Order Book and orders on the Cross Book that are executed in the Opening Process will receive Fee Code X on their execution reports and will be subject to a fee of \$0.0009 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00). Further, orders that were displayed on the Continuous Order Book during the Pre-Market Session<sup>10</sup> that are executed in the Opening Process will receive new Fee Code X and existing Fee Code L, and will not be charged a fee because, pursuant to the IEX Fee Schedule, to the extent a Member receives multiple Fee Codes on an execution, the lower fee shall apply.<sup>11</sup>

The Exchange notes that the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity, and the exception to the Non-Displayed

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<sup>8</sup> The Exchange notes that orders taking or adding non-displayed liquidity prior to or after the Opening Process, will continue to receive Fee Close I, either alone or in conjunction with other applicable Fee Codes.

<sup>9</sup> See Rule 11.231(a).

<sup>10</sup> See Rule 1.160(z).

<sup>11</sup> See IEX Fee Schedule, Transaction Fees, bullet three.

Match Fee for displayable orders that remove non-displayed resting interest upon entry are not applicable to the Opening Process. As discussed below in the Statutory Basis section, the Opening Process is a bulk execution without explicit counterparties.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>12</sup> of the Act in general, and furthers the objectives of Sections 6(b)(4)<sup>13</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

IEX believes that its proposed pricing for the Opening Process is reasonable and equitable because the Exchange is proposing to charge fees analogous to those already in place for orders executed on the Exchange during continuous trading,<sup>14</sup> while also accounting for orders on the Cross Book executed in the Opening Process. Specifically, non-displayed orders resting on the Continuous Order Book during the Pre-Market Session that are executed in the Opening Process, as well as orders on the Cross Book that are executed in the Opening Process, will be charged the Opening Match Fee (which is equal to the existing Non-Displayed Match Fee), while displayed orders on the Continuous Order Book in the Pre-Market Session executed in the Opening Process will be subject to the existing Displayed Match Fee.

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> See Securities Exchange Act Release No. 78550 (August 11, 2016), 81 FR 54873 (August 17, 2016) (SR-IEX-2016-09).

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge the Opening Match Fee (which is equal to the existing Non-Displayed Match Fee) to orders on the Cross Book that are executed in the Opening Process, because such orders (regardless of display instruction) are queued and not displayed prior to or during the Opening Process.<sup>15</sup> Furthermore, as noted above, such fee is consistent with the fee currently charged by the Exchange for taking and providing non-displayed liquidity.

While the Displayed Match Fee applicable to executions during continuous trading also applies to a non-displayed order that removes liquidity from a displayed resting order as counterparty, in the context of the Opening Process (which is a bulk execution of multiple buy and sell orders at a single price), the Exchange does not believe that it is appropriate to provide the Displayed Match Fee to non-displayed orders that execute in the Opening Process because there are no explicit counterparties in a bulk execution. Similarly, the Exchange does not believe that the exception to the Non-Displayed Match Fee for displayable orders that take resting interest upon entry is applicable in the context of the Opening Process since such orders are not able to remove resting interest on entry in the Opening Process, because they are either queued on the Cross Book and not displayed, or resting displayed on the Continuous Order Book.<sup>16</sup> Furthermore, as noted above the Opening Process is a bulk execution of multiple buy and sell orders at a single price, and thus there are no counterparties to distinguish between

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<sup>15</sup> The Exchange notes that to the extent such orders are unexecuted after the Opening Process, the Exchange would display such orders consistent with their display instructions.

<sup>16</sup> The Exchange notes that it is possible for a displayed order to remove non-displayed liquidity in the Pre-Market Session; however, such execution would not be part of the Opening Process, and would be subject to the exchanges existing fee schedule.



liquidity provider and liquidity takers, or their respective display status.<sup>17</sup>

IEX also believes that it is appropriate, reasonable, and consistent with the Act not to charge a fee for the execution of an order that was displayed on the Continuous Order Book during the Pre-Market Session prior to the Opening Process. As with the existing fee structure for execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery, and consistent with the overall goal of enhancing market quality. IEX believes that, as with the existing Displayed Match Fee, not charging a fee for such a previously displayed order is equitable and not unfairly discriminatory because it is designed to facilitate execution of, and enhance trading opportunities for, displayable orders, thereby further incentivizing entry of displayed orders.

Further, the Exchange notes that the proposed fees are nondiscriminatory because they will apply uniformly to all Members and all Members have the opportunity to submit both displayed and non-displayed orders for execution in the Opening Process. In addition, the Exchange believes that the proposed fees for the Opening Process are appropriate, reasonable, and consistent with the Act, because such fees are within the range of transaction charged by other exchanges for the opening process for non-listed securities.<sup>18</sup> Further, although orders that execute in the Opening Process may be subject

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<sup>17</sup> See Rule 11.231(a).

<sup>18</sup> For example, the Nasdaq Stock Market charges fees ranging from \$0.0015 - \$0.00085 for orders executed in the Nasdaq Opening Cross, including capping such fees at \$35,000 per month for certain members, which includes crosses for listed and non-listed securities (see, <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>). Similarly, Bats EDGX Exchange charges \$0.0010 for orders executed in the EDGX opening or re-opening process for non-listed securities priced above \$1.00 (see, [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/)).

to different fees, for the reasons discussed in the Purpose section, the Exchange notes that other exchanges also charge differential pricing for orders that execute in their opening process.<sup>19</sup>

Additionally, the Exchange believes that its proposed Fee Code X, to be provided on execution reports, will provide transparency and predictability to Members as to the applicable transaction fees, because Members can determine which Fee Code is applicable to the execution of a particular order in the Opening Process.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Further, IEX believes that its proposal does not raise any new or novel issues that have not previously been considered by the Commission in connection with the existing IEX fees or the fees of other national securities exchanges.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing

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<sup>19</sup> Id.

structure will increase competition and hopefully draw additional volume to the Exchange for the Opening Process. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition of Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed in some circumstances, these different fees are not based on the type of Member entering the orders that execute in the Opening Process but on the type of order entered and all Members can submit any type of order. Further, the proposed fees are intended to encourage market participants to bring increased volume to the Exchange, which benefits all market participants.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>20</sup> of the Act.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>21</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-2017-28 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-2017-28. 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

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<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at [www.iextrading.com](http://www.iextrading.com). All comments received will be posted without change; 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-2017-28 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>22</sup>

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5 – Text of Proposed Rule Change

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

Investors Exchange  
Fee Schedule 2017

Effective August 16, 2017 Note: Changes to the Fee Schedule indicated with underscored red text are effective but have not yet been implemented. The Exchange will announce the implementation date via a Trader Notice. See SR-2017-27 for information on the implementation date.

**Membership Fees** -No Change.

**Connectivity Fees** -No Change.

**Market Data Fees** -No Change.

**Transaction Fees**

- All fees identify cost per share executed.
- Footnotes provide further explanatory text or, where annotated to fee description, indicate variable rate changes, provided the conditions in the footnote are met.
- At the end of each calendar month, executions with Fee Code Q that exceed the CQRF Threshold are subject to the Crumbling Quote Remove Fee. Otherwise, to the extent a Member receives multiple Fee Codes on an execution, the lower fee shall apply.

**Definitions**

- "Fee Code" is identified on each execution report message from the Exchange in the Trade Liquidity Indicator (FIX tag 9730) field.
- "Fee" means fees for securities with an execution price at or above \$1.00.
- "Fee < \$1.00" means fees for securities with an execution price below \$1.00.
- "MPID" means a market participant identifier
- "TDVT" means the total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction.
- "TMVD" means total monthly volume displayable calculated as the sum of executions on IEX from each of the Member's MPID's (on a per MPID basis) displayable orders during the calendar month.
- "Cost" means any fees charged by/rebates received from away venues.
- "CQRF Threshold" means the Crumbling Quote Remove Fee Threshold. The threshold is equal to 5% of the sum of a Member's total monthly executions on IEX if at least 1,000,000 shares during the calendar month, measured on an MPID basis.

Fee Code	Description	Fee	Fee < \$1.00
L	<b>Displayed Match Fee</b>	FREE	
	Taking Displayed Liquidity		
	Providing Displayed Liquidity		
I	<b>Non-Displayed Match Fee</b>	\$0.0009	0.30% of TDVT
	Taking Non-Displayed Liquidity*		
	Providing Non-Displayed Liquidity		
X	<b><u>Opening Match Fee****</u></b>	\$0.0009	<u>0.30% of TDVT</u>
	<u>Execution in the Opening Process</u>		
S	<b>Internalization Fee</b>	FREE	
	Member executes against resting liquidity provided by such Member		
Q	<b><u>Crumbling Quote Remove Fee Indicator</u></b>	\$0.0030**	<u>0.30% of TDVT**</u>
	<u>Taking Liquidity During Periods of Quote Instability, as defined in IEX Rule 11.190(g)</u>		
Alpha	<b><u>Routing and removing liquidity (all routing options)***</u></b>	Cost + \$0.0001	

## Footnotes

\* \$0.0009 (0.30% of TDVT for < \$1.00), otherwise FREE if Taking Non-Displayed Liquidity with a Displayable Order and at least 90% of TMVD, on a per MPID basis, was identified by IEX as Providing Displayed Liquidity (i.e., the Member's execution reports reflect that the sum of executions with Fee Code L and a Last Liquidity Indicator (FIX tag 851) of '1' (Added Liquidity), divided by the sum of executions with Fee Code L, is at least 90% for the calendar month).

**\*\* Executions with Fee Code Q that exceed the CQRF Threshold are subject to the Crumbling Quote Remove Fee.**

**\*\*\*** The Exchange will pass-through in full any Costs to the Member and add the IEX fee (\$0.0001).

**\*\*\*\*** Non-Displayed Orders that execute in the Opening Process for Non-IEX-Listed Securities will receive a Fee Code of X rather than I. Orders that were Displayed Orders on the Continuous Book during the Pre-Market Session prior to the Opening Process that execute in the Opening Process for Non-IEX-Listed Securities will receive Fee Codes of L and X.

Registration and Processing Fees – No Change.