

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84360; File No. SR-IEX-2018-20)

October 4, 2018

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify its Fee Schedule to Specify the Circumstances under which the Exchange will Aggregate the Activity of Affiliated Members for Purposes of Applying the Provisions of Rule 11.170(a) Related to the IEMM Program

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 26, 2018, 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 and II 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”),⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to specify the circumstances under which the Exchange will aggregate the activity of affiliated Members for purposes of applying the provisions of Rule 11.170(a) (IEX

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

Enhanced Market Maker (“IEMM”) Program. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷

The text of the proposed rule change is available at the Exchange’s website at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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

Background

The Exchange proposes to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to specify the circumstances under which the Exchange will aggregate the activity of affiliated Members for purposes of applying the provisions of the IEMM Program. The Exchange also proposes a minor change to correct an errant cross reference in the Fee Schedule.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4.

The IEMM program is a Market Quality Incentive Program that offers certain fee-based incentives for Members that provide meaningful and consistent support to market quality and price discovery by extensive quoting at and/or near the NBBO in IEX-listed securities for a significant portion of the day.⁸ Specifically, a Member that satisfies the quoting criteria for one or more of the following tiers in each security listed on IEX over the course of the month that the security is listed on IEX may be designated as an IEMM:

- Inside Tier IEMM: One or more of its MPIDs has a displayed order entered in a principal capacity of at least one round lot resting on the Exchange at the NBB and/or the NBO for an average of at least 20% of Regular Market Hours (the “NBBO Quoting Percentage”); and/or
- Depth Tier IEMM: One or more of its MPIDs has a displayed order entered in a principal capacity of at least one round lot resting on the Exchange at the greater of 1 minimum price variation (“MPV”) or 0.03% (i.e., 3 basis points) away from the NBBO (or more aggressive) for an average of at least 75% of Regular Market Hours (the “Depth Quoting Percentage”).

Members that are designated as an IEMM qualify for the Standard Match Fee Discount, Reduced Match Fee Discount, and the Spread-Crossing Eligible Remove Fee Discount. Specifically, for Inside Tier IEMMs, the Standard Match Fee Discount, Reduced Match Fee Discount, and the Spread-Crossing Eligible Remove Fee Discount results in a \$0.0001 discount for each execution subject to the Standard Match Fee Discount, Reduced Match Fee Discount, or the Spread-Crossing Eligible Remove Fee Discount, respectively, with no cap on aggregate monthly savings. Furthermore, Depth

⁸ See Rule 11.170(a). See also Securities Exchange Act Release No. 82636 (February 6, 2018), 83 FR 6059 (February 12, 2018) (SR-IEX-2018-02).

Tier IEMMs will receive a \$0.0001 discount for each execution subject to the Standard Match Fee Discount, the Reduced Match Fee Discount, and the Spread-Crossing Eligible Remove Fee Discount, up to \$20,000.00 in aggregate savings per month. If a Member qualifies under both the Inside Tier and the Depth Tier, any earned Standard Match Fee Discount, Reduced Match Fee Discount, and Spread-Crossing Eligible Remove Fee Discount will be aggregated and applied to such Member's executions subject to the Standard Match Fee, Reduced Match Fee, or Spread-Crossing Eligible Remove Fee in securities priced at or above \$1.00, subject to the applicable Depth Tier aggregate monthly savings cap of \$20,000.00.

Proposed Changes

The Exchange proposes to amend its Fee Schedule to provide for aggregation of affiliated Members' activity for purposes of applying the provisions of the IEMM Program. The proposal is substantially based on Nasdaq Stock Market, LLC ("Nasdaq") Rule 7027, and the New York Stock Exchange, Inc.'s ("NYSE") Price List.⁹

Specifically, the Exchange proposes to add footnote 2 to the Exchange's Fee Schedule, entitled "Aggregation of activity of affiliated Members" to specify that for purposes of applying the provisions of Rule 11.170(a), a Member may request that the Exchange aggregate its activity with activity of such Member's affiliated Members. A Member requesting aggregation of affiliate activity is required to certify to the Exchange the affiliate status of Members whose activity it seeks to aggregate prior to receiving approval for aggregation, and inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange shall review available information

⁹ See Nasdaq Rule 7027; see also NYSE's Price List, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity.¹⁰ The Exchange shall approve a request unless it determines that the certification is not accurate.

If two or more Members become affiliated on or prior to the sixteenth day of a month and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more Members become affiliated after the sixteenth day of a month or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month. For purposes of applying the provisions of Rule 11.170(a), references to an IEMM shall include the Member and any of its affiliates that have been approved for aggregation. The term “affiliate” shall mean any Member under 75% common ownership or control of that Member.

Lastly, the Exchange proposes to correct an errant cross reference in the Fee Schedule that incorrectly cross references Rule 11.160(a) (Notification Requirements for Offering Participants) as the IEX Enhanced Market Maker program. The Exchange proposes to correct the cross reference to appropriately cite to Rule 11.170(a) (Market Quality Incentive Programs).

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of

¹⁰ For example, the Exchange would review a Member’s Form BD in FINRA’s Central Registration Depository (“CRD”) to verify that the Member(s) for which it seeks aggregation pursuant to the proposed rule is under 75% common ownership or control of the requesting Member.

Section 6(b)¹¹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is consistent with the protection of investors and the public interest because it establishes a clear and objective process for aggregating activity across affiliated legal entities to simplify the process of billing under the IEMM program. Furthermore, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest in that it establishes a clear policy with respect to affiliate aggregation for fee purposes that is common among other exchanges, thereby promoting Members' understanding of the parameters of the IEMM program and the efficiency of its administration. The proposed rule is equitable because all similarly situated members are subject to the proposed rules equally, and access to the Exchange is offered on fair and nondiscriminatory terms.

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

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

bills of Members that become affiliated during the course of a month. The Exchange believes that this approach will thus simplify the process of billing under the IEMM program for the Exchange and its Members and is substantially similar to aggregation standards adopted by other exchanges.¹³

The Exchange believes that the proposed rule change avoids disparate treatment of Members that have divided their various business activities between separate legal entities as compared to Members that operate those business activities within a single legal entity. The Exchange further notes that the proposed rule change is reasonable and is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the rules across exchanges that govern the aggregation of certain activity for purposes of billing. In particular, as noted above, both Nasdaq and NYSE have substantially similar rules governing aggregation of activity for fee purposes.¹⁴ Thus, the Exchange believes the proposed change does not present any unique or novel issues under the Act that have not already been considered by the Commission.

Lastly, the Exchange believes the proposed correction to the cross-reference is reasonable and consistent with the protection of investors and the public interest in that it is designed to make the Exchange's Fee Schedule more clear and accurate, to the benefit of all market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the proposed rule change, which

¹³ See supra note 4 [sic].

¹⁴ See supra note 4 [sic].

applies equally to all Members, is intended to reduce the Exchange's administrative burden in applying discounts for firms which have requested aggregation with an affiliate Member, and is substantially similar to rules adopted by other exchanges. Because the market for order execution and routing is extremely competitive, Members may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange thus does not believe the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Lastly, the Exchange believes the proposed correction to the cross reference, as described above, does not impose any burden on competition, as it is simply designed to make the Exchanges Fee Schedule more clear and accurate, to the benefit of 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

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to 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 so that the Exchange may implement the proposed rule change to coincide with the launch of its listing program. The Exchange believes that providing for IEMM affiliate aggregation will help to address the significant competitive challenges it will face in establishing itself as a competitive listings market by providing appropriate incentives to affiliated Members seeking to become IEMMs that accrue to the benefit of issuers listed on IEX as well as market participants generally. The Commission does not believe that the proposed change presents any new or novel issues, as the Exchange's proposal is based on similar rules of other listing exchanges. Accordingly, waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁹

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

change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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)²⁰ 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. Please include File Number SR-IEX-2018-20 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-2018-20. 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

²⁰ 15 U.S.C. 78s(b)(2)(B).

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at www.iextrading.com. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2018-20 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.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).