

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101231; File No. SR-IEX-2024-20)

October 2, 2024

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 11.330 to Adopt a New Market Data Product to be Known as DEEP+

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 19, 2024, 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 Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange with the Commission a proposed rule change to amend Rule 11.330 to adopt a new market data product to be known as DEEP+, which is an uncompressed data feed that provides order-by-order depth of book quotations for all displayed orders for securities traded on IEX, and execution information (i.e., last sale information) for executions on the Exchange. The Exchange has designated this proposal as non-controversial and provided the

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.

Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶ IEX also proposes to update its Fee Schedule to reflect that DEEP+ will be offered free of charge for an initial incentive period.

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 statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend IEX Rule 11.330(a) to add a new subparagraph (3) that describes a new market data product to be known as DEEP+, and to renumber the current subparagraphs (3) and (4) to be subparagraphs (4) and (5). The Exchange also proposes to make a conforming edit to IEX Rule 11.232(f), and to update its Fee Schedule⁷ to reflect that IEX will be offering DEEP+ free of charge for an initial incentive period.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ See IEX Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

Currently, the Exchange offers two Real-Time⁸ market data products: TOPS⁹, an uncompressed data feed that provides aggregated top of book quotations for all displayed orders resting on the Order Book and execution information (i.e., last sale information) for executions on the Exchange; and DEEP¹⁰, an uncompressed data feed that provides aggregated depth of book quotations for all displayed orders resting on the Order Book at each price level, and execution information (i.e., last sale information) for executions on the Exchange.¹¹ The TOPS and DEEP feeds also include IEX’s “Retail Liquidity Identifier”¹², which is disseminated by IEX to TOPS, DEEP, and the appropriate securities information processor (“SIP”), when IEX’s Order Book has at least one round lot of aggregated Retail Liquidity Provider¹³ order interest (“RLP Interest”)¹⁴ for a particular security, provided that the RLP Interest is resting at the Midpoint Price¹⁵ and priced at least \$0.001 better than the NBB¹⁶ or NBO¹⁷. The Retail Liquidity Identifier¹⁸ provides the symbol and side of the RLP Interest, but does not include its price or size.¹⁹

Based on informal discussion with market participants, the Exchange has determined that

⁸ “Real-Time” means IEX market data that is accessed, used, or distributed less than fifteen (15) milliseconds after it was made available by the Exchange. IEX provides only Real-Time IEX market data to Data Subscribers.

⁹ See IEX Rule 11.330(a)(1).

¹⁰ See IEX Rule 11.330(a)(2).

¹¹ TOPS and DEEP would also provide IEX Auction Information for any IEX-listed securities. Currently, IEX is not a listing exchange, and such information is only provided with respect to auction test symbols.

¹² See IEX Rule 11.232(f).

¹³ See IEX Rule 11.190(b)(14).

¹⁴ See IEX Rule 11.232(f).

¹⁵ See IEX Rule 1.160(t).

¹⁶ See IEX Rule 1.160(u).

¹⁷ See IEX Rule 1.160(u).

¹⁸ See IEX Rule 11.232(f).

¹⁹ Id.

there is demand for an order-by-order depth of book feed offering for displayed orders, in addition to the aggregated depth of book data offered by DEEP. Accordingly, the Exchange proposes to amend Rule 11.330(a)(3) to offer the new DEEP+ market data product.

As proposed, DEEP+ will disseminate, on a Real-Time basis, order-by-order information for all displayed orders resting on the Order Book for securities traded on IEX and execution information (i.e., last sale information) for executions on the Exchange. DEEP+ will provide details on each displayed order resting on the Order Book including OrderID, symbol, side, timestamp associated with the message, price, and size, and will update each order's data when there are amendments, cancels, and executions.²⁰

Like TOPS and DEEP, DEEP+ will also disseminate a Retail Liquidity Identifier for each security for which IEX has the requisite RLP Interest. Therefore, IEX proposes to amend IEX Rule 11.232(f) to reflect that the Retail Liquidity Indicator will be disseminated to DEEP+, in addition to being disseminated to TOPS, DEEP, and the SIPs. IEX notes that this order-specific information, including the disseminated Retail Liquidity Identifier²¹, is functionally equivalent to the order-specific information provided by other exchanges' order-by-order feeds.²²

For an initial incentive period, DEEP+ will be provided free of charge, and Data

²⁰ IEX notes that Data Subscribers will be able to use DEEP+ to derive IEX's top of book quotations for internal use from the order-by-order data, as set forth in IEX's Market Data Policies (available at <https://www.iexexchange.io/resources/trading/market-data>).

²¹ See, e.g., Cboe BYX Rule 11.22(k) (referencing the inclusion of Cboe BYX's retail liquidity identifier in the BYX Summary Depth data feed).

²² For example, Cboe BYX provides an order-by-order depth of book with the equivalent data. See Cboe US Equities/Options Multicast Depth of Book (PITCH) Specification, available at https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf.

Subscribers²³ may redistribute DEEP+ data, whether on a Real-Time or Delayed²⁴ basis, free of charge (for an initial incentive period), subject to the terms of the IEX Data Subscriber Agreement and IEX’s Market Data Policies.²⁵

Additionally, IEX proposes to amend the Fee Schedule to insert two new rows in the table of Market Data Fees reflecting that DEEP+ initially will be offered for free (on a Real-Time or Delayed basis).²⁶ IEX also proposes to delete the two references to footnote 3 in the Market Data Fees table (in the rows for Real-Time DEEP and TOPS), and to amend the footnote’s language so that it is applicable to DEEP+. Footnote 3 currently reads “These fees will be operative beginning July 1, 2022,” which was the date IEX began charging to distribute TOPS and DEEP in Real-Time. Because that date applied to the initiation of fees for TOPS and DEEP in Real-Time (and has passed), IEX proposes to amend the footnote to apply to DEEP+ and read: “These fees will be operative when the product is launched. IEX will announce the launch date by Trader Alert at least 10 business days in advance of the product launch” and to apply footnote 3 to the two new rows describing the free distribution of DEEP+ on both a Real-Time and Delayed basis.²⁷

²³ “Data Subscriber” means any natural person or entity that receives Real-Time IEX market data either directly from the Exchange or from another non-affiliate Data Subscriber. A Data Subscriber must enter into a Data Subscriber Agreement with IEX in order to receive Real-Time IEX market data. A natural person or entity that receives Real-Time IEX market data from an affiliated Data Subscriber is subject to the Data Subscriber Agreement of such affiliated Data Subscriber. See IEX Fee Schedule.

²⁴ “Delayed” means IEX market data that is accessed, used, or distributed at least fifteen (15) milliseconds after it was made available by the Exchange. A Data Subscriber may redistribute Real-Time IEX market data that it receives from the Exchange on a Delayed basis to a natural person or entity. In addition, a recipient of Delayed IEX market data may further redistribute such Delayed IEX market data to a natural person or entity. See IEX Fee Schedule.

²⁵ Available at <https://www.iexexchange.io/resources/trading/market-data>.

²⁶ Should IEX in the future decide to charge for DEEP+, it will make a fee filing pursuant to the SEC rule filing process.

²⁷ While not specified in the Fee Schedule, as noted throughout this filing, IEX will be offering DEEP+ free of charge during an initial incentive period.

The Exchange notes that other exchanges offer both aggregated and order-by-order depth of book market data products. For example, Cboe BYX offers both Multicast Depth²⁸ (also known as BYX Depth), an order-by-order depth of book market data feed, and BYX Summary Depth²⁹, a depth of book data feed that offers aggregated quotations for all displayed orders for up to five price levels. Cboe BYX's order-by-order depth of book market data feed contains the same order-specific information that will be contained in IEX's proposed DEEP+ market data feed.³⁰ Thus, the Exchange does not believe that this aspect of the proposal raises any new or novel issues not already considered by the Commission.³¹ The Exchange plans to implement the proposed changes during the fourth quarter of 2024, pending completion of necessary technology changes and subject to effectiveness of this proposed rule change. The Exchange will announce the implementation date of the proposed changes by Trader Alert at least 10 business days in advance of such implementation date and within 120 days of effectiveness of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act³² in general, and with Section 6(b)(5) of the Act,³³ in particular. DEEP+ will be

²⁸ See Cboe BYX Rule 11.22(c).

²⁹ See Cboe BYX Rule 11.22(k).

³⁰ See supra note 22.

³¹ DEEP+ Data Subscribers will also have access to the DEEP+ SNAP service, which allows Data Subscribers to download point-in-time snapshots of DEEP+ in order to enable them to accelerate late start recovery. As with its current DEEP SNAP and TOPS SNAP services, DEEP+ SNAP will be offered for no additional charge to DEEP+ Data Subscribers; thus, DEEP+ SNAP will also be offered free of charge during the initial incentive period.

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

provided consistent with the purposes of Section 6(b)(5) of the Act.³⁴ Specifically, the Exchange believes that the proposed introduction of an order-by-order depth of book market data feed, which will provide Data Subscribers with full depth-of-market information, will serve to more closely align the information provided by IEX with that of competitor exchanges, while providing additional data to the marketplace. Thus, this proposal should help remove impediments to a free and open market, in furtherance of the protection of investors and the public interest.

Additionally, the benefit of providing additional data to the marketplace may be useful to certain market participants with trading strategies that take into account order-by-order depth of book feeds such as DEEP+. Thus, these Members may choose to deploy additional trading strategies on IEX that align with how they function on other exchanges. IEX believes that this potential deployment of additional trading strategies on IEX by certain market participants could attract additional volume to IEX (both displayed and non-displayed), which would benefit all market participants. Thus, this proposal should help remove impediments to a free and open market, in furtherance of the protection of investors and the public interest.

Moreover, DEEP+ will be available to all Data Subscribers on an equal basis including being offered free of charge to all Data Subscribers on an initial basis. By expanding all market participants' access to Real-Time market data disseminated from IEX's displayed Order Book, the proposal is not designed to permit unfair discrimination among customers, issuers, and brokers; and 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

³⁴ 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by providing more detailed quotation and transaction information to market participants. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it is designed to protect investors and the public interest and promote just and equitable principles of trade by providing additional transparency regarding displayed orders on the IEX Order Book, and also provides market participants with a disaggregated feed that allows them to construct the IEX BBO information otherwise than under the CTA and Nasdaq/UTP Plans. Further, the proposal would not permit unfair discrimination because the information will be available to all market participants and market data vendors on an equivalent basis. In addition, any market participant that wishes to receive IEX BBO and last sale information via the CTA and Nasdaq/UTP Plans will still be able to do so if they subscribe or access through a Data Subscriber.

The Exchange also believes that not charging a fee for DEEP+ for an initial incentive period (whether accessed on a Real-Time or Delayed basis) is appropriate, reasonable, and consistent with the Act because it is designed to incentivize market participants to subscribe to DEEP+, which may in turn encourage those same market participants to direct more order flow to the Exchange as discussed above, and such orders will have the benefit of exchange transparency, regulation, and oversight. IEX operates in a highly competitive environment, and not charging fees for DEEP+ is designed to enable it to compete effectively and to encourage market participants to connect to the Exchange.

The Exchange also believes that the proposed rule change is consistent with Section

11(A) of the Act³⁵ in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. As noted above, the Exchange will provide DEEP+ to Members and other recipients of Exchange data on terms that are fair and reasonable and not unreasonably discriminatory in that DEEP+ will be provided free of charge for an initial incentive period.

Additionally, IEX believes that the proposed rule change is consistent with the provisions with Section 6(b)(5) of the Act because DEEP+ would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason. Thus, the proposal should help remove impediments to a free and open market, in furtherance of the protection of investors and the public interest.

Further, IEX believes that the proposed edits to the Fee Schedule are consistent with the Act. Specifically, the proposal to update the Fee Schedule to state that DEEP+ will be offered for free³⁶, and to revise footnote 3 to make clear that the fee's (and product's) implementation date will be on a date to be announced by Trading Alert at least ten (10) business days in advance of the product launch are consistent with the Act because they will provide clarity to, and reduce confusion of, market participants about the cost and availability of this new market data product, which should help remove impediments to a free and open market, in furtherance of the protection of investors and the public interest.

³⁵ 15 U.S.C. 78k-1.

³⁶ While not specified in the Fee Schedule, as noted throughout this filing, IEX will be offering DEEP+ free of charge during an initial incentive period.

Finally, as noted in the Purpose section, offering both an order-by-order and aggregated depth of book market data product is consistent with the offerings of other exchanges. Specifically, as discussed in the Purpose section, Cboe BYX's order-by-order market data feed contains the same order-specific information that IEX will provide in DEEP+.³⁷ And Cboe BYX's order-by-order also contains the same non-order-specific information such as the Retail Liquidity Identifier, which DEEP+ will also contain.³⁸ Thus IEX believes it does not raise any new or novel issues not already considered by the Commission in the context of other exchanges' market data product filings.

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 is not proposing to charge a fee for DEEP+ during an initial incentive period and will make it available to market participants on a fair and impartial basis, and on terms that are not unfairly discriminatory. In addition, the Exchange believes that providing order-by-order depth of book quotations as described above is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by providing investors with a new exchange-specific source of market data, as well as to compete with other exchanges that offer similar market data products.

With regard to intra-market competition, the proposed order-by-order depth of book market data feed will be made equally available to all Members and Data Subscribers on a fair, impartial and nondiscriminatory basis without imposing any new burdens on the Members and

³⁷ See supra note 21.

³⁸ See supra note 22.

Data Subscribers, including the fact that it will be offered free of charge during an initial incentive period. As discussed in the Purpose and Statutory Basis sections, the proposed rule change is designed to provide all market participants more transparency into the order-by-order composition of IEX's Order Book.

With regard to inter-market competition, other exchanges are free to adopt similar market data product offerings, and, as discussed in the Purpose section, other exchanges like Cboe BYX already provide market participants the option of subscribing to an aggregated or order-by-order depth of book feed (or both). IEX's proposed DEEP+ feed will foster, not burden, competition by providing a new exchange-specific source of market data, which is similar to products offered by other exchanges. Thus, it will provide investors with a new option for receiving market data. Thus, the Exchange believes the proposed rule change is consistent with the Exchange Act because it will further encourage competition between IEX and other exchanges.

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 foregoing proposed rule 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.³⁹

³⁹ CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission 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 of the proposed rule

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)⁴⁰ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-20 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-IEX-2024-20. This file number should be included on 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

change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴⁰ 15 U.S.C. 78s(b)(2)(B).

comments on the Commission’s internet website (<https://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 Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2024-20 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Vanessa A. Countryman,
Secretary.

⁴¹ 17 CFR 200.30-3(a)(12).