

Required fields are shown with yellow backgrounds and asterisks.

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

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

Description

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

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

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * 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”),¹ and Rule 19b-4 thereunder,² Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to increase the fees assessed under specified circumstances for execution of orders that take liquidity during periods when the IEX System has determined that a “crumbling quote” exists with respect to the Protected National Best Bid (“NBB”) or Protected National Best Offer (“NBO”) for such security.³

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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See, Rule 600(b)(42) under Regulation NMS.

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 proposes to amend its fee schedule, pursuant to IEX Rule 15.110 (a) and (c), to increase the fees assessed under specified circumstances for execution of orders that take liquidity during periods when the IEX System has determined that a "crumbling quote" exists with respect to the Protected NBB or Protected NBO for such security.

Pursuant to IEX Rule 11.190(g), in determining whether quote instability or a crumbling quote exists, the Exchange utilizes real time relative quoting activity of certain Protected Quotations⁴ and a proprietary mathematical calculation (the "quote instability calculation") to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security ("quote instability factor"). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined quote instability threshold, the System treats the quote as unstable and the crumbling quote indicator ("CQI") is on. During all other times, the quote is considered stable, and the CQI is off. The System independently assesses the stability of the Protected NBB and Protected

⁴ Pursuant to Rule 11.190(g), the Protected Quotations of the New York Stock Exchange, Nasdaq Stock Market, NYSE Arca, Nasdaq BX, Bats BZX Exchange, Bats BYX Exchange, Bats EDGX Exchange, and Bats EDGA Exchange.

NBO for each security. When the System determines that a quote, either the Protected NBB or the Protected NBO, is unstable, the determination remains in effect at that price level for two milliseconds. The Exchange proposes to increase fees assessed for execution of buy (sell) orders that take liquidity at prices at or below (above) the NBO (NBB) during the two milliseconds when the CQI is on. Therefore, buy orders taking liquidity up to the Protected NBO and sell orders taking liquidity down to the Protected NBB when the CQI is on will be subject to the increased fee.

When CQI is on, Discretionary Peg orders⁵ and primary peg orders⁶ do not exercise price discretion to meet the limit price of an active (i.e., taking) order. Specifically, as set forth in Rule 11.190(b)(10), a Discretionary Peg order pegs to the less aggressive of the primary quote (i.e., NBB for buy orders and NBO for sell orders) or the order's limit price, if any, but, will exercise price discretion in order to meet the limit price of an active order up to the less aggressive of the Midpoint Price or the order's limit price, if any. However, a Discretionary Peg order will not exercise such price discretion when the CQI is on. Similarly, as set forth in Rule 11.190(b)(8), a primary peg order pegs to a price that is the less aggressive of one (1) minimum price variant ("MPV") less aggressive than the primary quote (i.e., one MPV below (above) the NBB (NBO) for buy (sell) orders) or the order's limit price, if any, but will exercise price discretion in order to meet the limit price of an active order up to the NBB (for buy orders) or down to the NBO (for sell orders), except when the CQI is on or if the order is resting at its limit price, if any.

⁵ See Rule 11.190(b)(10).

⁶ See Rule 11.190(b)(8).

By not permitting resting Discretionary Peg orders and primary peg orders to exercise price discretion during periods of quote instability, the Exchange is designed to protect such orders from unfavorable executions when its probabilistic model identifies that the market appears to be moving adversely to them. As noted above, when the IEX System determines that a quote (either the Protected NBB or the Protected NBO) is unstable, the determination, and corresponding limitation on Discretionary Peg and primary peg orders exercising price discretion, remains in effect at that price level for only two milliseconds. This limitation is designed to appropriately balance the protective benefits to Discretionary Peg and primary peg orders with the interest of avoiding potentially undue trading restrictions.

Based on market data analysis during June 2017, the Exchange identified that there are significant differences in short term markouts⁷ (and pro forma profit and loss⁸) for resting and taking orders between executions when the CQI is on and off, regardless of whether the NBB (NBO) moves lower (higher) within two milliseconds of the Exchange's determination of quote instability. Specifically, when the CQI is on, liquidity removing orders that execute on IEX (trading with a liquidity providing order resting on the order book, including but not limited to Discretionary Peg and primary peg orders) experience positive price markouts one second after the trade on a share basis 75.6% of the time, compared to 23.9% of the time when the CQI is off. Correspondingly, resting liquidity providing orders that trade when the CQI is on experience negative price

⁷ The term markouts refers to changes in the midpoint of the NBBO measured from the perspective of either the liquidity providing resting order or liquidity removing taking order over a specified period of time following the time of execution.

⁸ For purposes of this analysis, a pro forma profit or loss is calculated as the difference between the midpoint of the NBBO at the time of the execution compared to one second after.

markouts one second after the trade 75.6% of the time, compared to 23.9% of the time when CQI is off. Similarly, 72.1% of all orders received when the CQI is on (whether or not executed on IEX) arrive immediately prior to a favorable price move (based on one second markouts), compared to 18.2% of orders received when the CQI is off.

Moreover, the breakdown of orders entered and shares removed when the CQI is on or off evidences that certain trading strategies appear to involve entering liquidity taking orders targeting resting orders at prices that are likely to move adversely from the perspective of the resting order. Across all approximately 8,000 symbols available for trading on IEX, the CQI is on only 1.24 seconds per symbol per day on average (0.005% of the time during regular market hours),⁹ but 30.4% of marketable orders¹⁰ are received during those time periods, which indicates that certain types of trading strategies are seeking to aggressively target liquidity providers during periods of quote instability.

The Exchange believes that this data is particularly significant and evidences that Members entering liquidity taking orders when the CQI is on appear to be able to engage in a form of latency arbitrage by leveraging fast proprietary market data feeds and connectivity along with predictive strategies to chase short-term price momentum and successfully target resting orders at unstable prices. IEX believes that these types of trading strategies, with concentrated and aggressive tactics during moments of quote instability, are detrimental to the experience of other IEX participants. IEX further believes that such trading strategies create disparate burdens on resting orders,

⁹ On a volume weighted basis, the CQI is on for 6.50 seconds per day per symbol, 0.03% of the time during regular market hours.

¹⁰ An order is considered marketable for this analysis if it was a market order or its limit price is at or more aggressive than the far touch quotation.

particularly those that are displayed and therefore ineligible to benefit from the CQI.

Accordingly, to incentivize additional resting liquidity, including displayed liquidity, on IEX, the Exchange proposes to increase the fees applicable to orders that remove resting liquidity when the CQI is on if such orders constitute at least 5% of the Member's volume executed on IEX and at least 1,000,000 shares, on a monthly basis, measured on a per market participant identifier ("MPID") basis. As proposed, such orders that exceed the 5% and 1,000,000 share thresholds would be assessed a fee of \$0.0030 per each incremental share executed (or 0.3% of the total dollar value of the transaction for securities priced below \$1.00) that exceeds the threshold. For example, assume Member XYZ executed 100,000,000 shares through its MPID 1234 during a particular month, and 6,000,000 of such shares removed liquidity while the CQI was on. The 6,000,000 shares executed when the CQI was on exceed the threshold since such shares are more than 5% of MPID 1234's monthly volume (i.e., 5,000,000) and at least 1,000,000 shares. Member XYZ would therefore be charged the fee on 1,000,000 shares which is the incremental number of shares above 5% of the 100,000,000 shares executed by MPID 1234 during the month.

Setting the fee threshold at 5% and 1,000,000 shares is a narrowly tailored approach, designed to only charge the increased fee in circumstances where the Member executes a meaningful portion of its volume via liquidity removing orders when the CQI is on, and not charge the fee for executions of this type that are more likely to be incidental to broader trading activity by the Member and not part of a specific trading strategy that targets resting liquidity during periods of quote instability. The Exchange proposes to refer to this pricing as the "Crumbling Quote Remove Fee" on the Fee

Schedule with a Fee Code Indicator of “Q” to be provided by the Exchange on execution reports to Members removing liquidity when the CQI is on.

As proposed, to provide transparency about potential fees, the Exchange will begin providing Fee Code Indicator Q on execution reports at least one month prior to implementation of the Crumbling Quote Remove Fee so that Members can assess the impact of the new fee and make any corresponding adjustments to their trading strategies. IEX will announce the availability of new Fee Code Indicator Q approximately 30 days after effectiveness of this rule filing. IEX will provide at least ten business days’ notice of implementation of the proposed fee within 90 days of effectiveness of this rule filing.

(b) Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹¹ of the Act in general, and furthers the objectives of Sections 6(b)(4)¹² 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. Additionally, IEX believes that the proposed fee is consistent with the investor protection objectives of Section 6(b)(5)¹³ of the Act in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest.

The proposed new Crumbling Quote Remove Fee is designed to enhance the Exchange’s market quality by encouraging Members and other market participants to add

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

more liquidity to the Exchange order book, which benefits all investors by deepening the Exchange's liquidity pool. Specifically, the Exchange believes that trading strategies that target resting liquidity during periods of quote instability seek to trade at prices that are about to become stale, and thus discourage other market participants from entering liquidity providing orders on the Exchange. Thus, the Exchange believes that the proposal is reasonable because it would create an added incentive for Members and other market participants to provide liquidity on IEX since the increased fee may result in fewer orders seeking to remove liquidity when the CQI is on, and concomitant overall better execution quality.

Other exchanges offer incentives in the form of rebates and/or reduced fees that are designed to encourage market participants to send increased levels of order flow to such exchanges. These typically take the form of lower fees and higher rebates for meeting specified volume tiers.¹⁴ These fee and rebate structures are typically justified by other exchanges on the basis that increased liquidity benefits all investors by deepening the exchange's liquidity pool, which provides price discovery and investor protection benefits.¹⁵ The Exchange also notes that other exchanges charge different fees (or provide rebates) to the buyer and seller to an execution, which are generally referred to as either maker-taker or taker-maker pricing schemes. Typically, the exchange offering such pricing is seeking to incentivize orders that provide or remove liquidity, based on which type of orders receive a rebate. While these pricing schemes discriminate

¹⁴ See, e.g., New York Stock Exchange Price List 2017, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. See also, Nasdaq Rule 7018.

¹⁵ See, e.g., Securities Exchange Act Release No. 80034 (February 14, 2017), 82 FR 11275 (February 21, 2017) (File No. SR-BatsEDGX-2017-09).

against the Member party to the trade that is charged a fee (in favor of the Member party to the trade that is paid a rebate) the Commission has not found these fees to be unfairly discriminatory in violation of the Act.¹⁶

Similarly, the proposal seeks to promote increased liquidity and price discovery on the Exchange by providing a fee designed to incentivize liquidity providing orders that can improve the quality of the market. The Exchange believes that, to the extent the fee is successful in reducing targeted and aggressive liquidity removing orders, it would contribute to investors' confidence in the fairness of transactions and the market generally, thereby benefiting multiple classes of market participants and supporting the public interest and investor protection purposes of the Act.

The Exchange believes that maker-taker and taker-maker pricing schemes in general create needless complexity in market structure in various ways and result in conflicts of interest between brokers and their customers. Accordingly, IEX has made a decision not to adopt rebate provisions in favor of a more transparent pricing structure that generally charges equal fees (or in some cases, no fee) for a particular trade to both the "maker" and "taker" of liquidity. Given this decision, IEX must use other means to incentivize orders to rest on its order book. IEX's execution quality is one important incentive, but this incentive can be undercut by trading strategies that target resting orders during periods of quote instability. Accordingly, IEX believes that the proposed Crumbling Quote Remove Fee is one reasonable way to compete with other exchanges for order flow, consistent with its alternative exchange model and without relying on rebates.

¹⁶ See note 15 *supra*.

As discussed in the Purpose section, the increased fee would only be charged on incremental orders above the 5% and 1,000,000 share monthly thresholds that remove resting liquidity when the CQI is on. The Exchange believes that limiting the fee to such circumstances is reasonable and equitable because it would not apply when executions taking liquidity while the CQI is on are likely to be incidental and not part of a deliberate trading strategy that targets resting liquidity during periods of quote instability. Consequently, the Exchange believes that the proposed fee structure is not unfairly discriminatory because it is narrowly tailored to charge a fee only on trading activity that is indicative of a trading strategy that may adversely affect execution quality on IEX and is reasonably related to the purpose of encouraging liquidity providing orders on IEX without the use of rebates.

The Exchange also believes that it is appropriate, and consistent with the Act, to not charge a fee to Members that do not exceed the 5% and 1,000,000 share thresholds during the month in question. This flexibility is designed to address limited inadvertent liquidity removal when the CQI is on for Members whose order flow during such times is incidental. In addition, the Exchange believes it is appropriate, and consistent with the Act, to not charge a fee to Members for the execution of buy (sell) orders that take liquidity at prices above (below) the Protected NBO (NBB) during the two milliseconds when the CQI is on because such executions are not indicative of a trading strategy that targets resting orders at soon to be stale prices during periods of quote instability.

Further, the Exchange believes that the data from June 2017 supports the position that the proposed threshold is narrowly tailored to only charge the fee based on objective criteria indicating that execution of the orders in question reasonably appear to be part of

a deliberate trading strategy that targets resting liquidity during periods of quote instability. Based on data from June 2017, the Exchange estimates that only 13 Members each using one unique MPID (out of 125 total Members trading through 158 MPIDS that traded on IEX during the month) would have been subject to the proposed fee, five of which would have paid less than \$1,500 in such fees.¹⁷ The Members that were above the threshold also present a significantly different order entry profile than Members below the threshold with respect to orders entered when the CQI was on. For the 13 Member MPIDs above the threshold, 63.1% of such orders were marketable to the midpoint of the NBBO (64.3% for the eight Member MPIDs that would have paid more than \$1,500), while for Member MPIDs below this number was only 13.4%. The Exchange believes that this difference evidences that Members above the threshold were more likely to be engaging in a deliberate strategy to target resting orders at soon to be stale prices.¹⁸

The Exchange also believes that it is consistent with the Act and an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities to measure whether the threshold is reached on an MPID basis. As discussed above, the threshold is designed to narrowly focus on executions that appear to be part of a deliberate trading strategy that targets resting liquidity during periods of quote instability. The Exchange believes that Members that utilize multiple MPIDs generally use different MPIDs for different trading strategies or customers. Therefore, the Exchange believes that measuring by MPID is a more precise manner of assessing

¹⁷ The overall range would have been \$426.49 to \$123,897.20.

¹⁸ Analysis of trading on IEX during April, May and July is consistent with the June data analysis.

whether a Member's trading strategy (or that of a customer) is part of a deliberate trading strategy that targets resting liquidity during periods of quote instability.

Accordingly, the Exchange submits that the proposed threshold is narrowly tailored to address particular trading strategies (rather than particular classes of Members) that may operate to disincentivize the entry of resting orders by other market participants. Specifically, and as discussed above, to the extent the proposed fee is successful in reducing such trading strategies on IEX, it may result in market quality improvements which could benefit multiple classes of market participants.

The Exchange further believes that charging the Crumbling Quote Remove Fee only to the liquidity remover is equitable and not unfairly discriminatory because it is designed to incentivize order flow that enhances the quality of trading on the Exchange and disincentivize trading that does not. As discussed above, IEX believes that there are precedents for exchanges to charge different fees based upon meeting (or not meeting) particular criteria, as well as maker-taker and taker-maker pricing structures whereby the liquidity adder and remover to a trade are subject to differing fees and rebates, to incentivize certain types of trading activity. Fees and rebates based on maker-taker and taker-maker pricing as well as on volume-based tiers have been widely adopted by equities exchanges. And in some cases, maker-taker or taker-maker pricing has been combined with volume-based tiers that result in differential fees and rebates for different exchange members. These fee structures have been permitted by the Commission. For example, Bats EDGA Exchange, Inc. ("EDGA") previously offered a rebate contingent

upon adding specified amounts of liquidity to EDGA.¹⁹ Notwithstanding that certain classes of members (e.g., exchange routing brokers) do not typically add liquidity on competing exchanges, this fee structure was justified by EDGA on the basis that, generally, it encourages growth in liquidity on EDGA and applies equally to all members.²⁰ Similarly, while the proposed IEX fee structure will result in the Crumbling Quote Remove Fee being imposed only on members using specific trading strategies, it is also designed to attract liquidity to IEX and applies equally to all Members.

The Exchange also notes that there is precedent to charge a different fee (or pay a different rebate) based on the execution price of an order. The Bats BZX Exchange, Inc. pays a rebate of \$0.0017 to a non-displayed order that adds liquidity, while if such an order receives price improvement it does not receive a rebate or pay a fee.²¹

Thus, maker-taker, taker-maker, and volume tier based fee structures (separately or in combination) have been adopted by other exchanges on the basis that they may discriminate in favor of certain types of members but not in an unfairly discriminatory manner in violation of the Act. As with such fee structures, the Exchange believes that the proposed fee change is equitable and not unfairly discriminatory because it is narrowly tailored to disincentive to all Members from deploying trading strategies designed to chase short-term price momentum during periods when the CQI is on and thus potentially adversely impact liquidity providing orders. IEX believes that, to the extent it is successful in this regard, the proposed fee structure may lead to increased

¹⁹ See Securities Exchange Act Release No. 80976 (June 20, 2017), 82 FR 28920 (June 26, 2017) (SR-BatsEDGA-2017-18).

²⁰ See, e.g., Securities Exchange Act Release No. 69066 (March 7, 2013), 78 FR 16023 (March 13, 2013) (SR-EDGA-2013-10).

²¹ See Bats BZX Exchange Fee Schedule, available at: http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

liquidity providing orders on IEX which could benefit multiple classes of market participants through increased trading opportunities and reduced latency arbitrage.

Further, the Exchange notes that the Nasdaq Stock Market (“Nasdaq”) charges excess order fees (ranging from \$0.005 to \$0.01 per excess weighted order) on certain members that have a relatively high ratio of orders entered away from the NBBO to orders executed in whole or in part, subject to a carve-outs for specified lower volume members and certain registered market makers.²² In its rule filing adopting the fee Nasdaq justified it as designed to achieve improvements in the quality of displayed liquidity to the benefit of all market participants.²³ Nasdaq also asserted that the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices, noting that “[i]deally, the fee will be applied to no one because market participants will adjust their behavior to avoid the fee.”²⁴

Similarly, the proposed IEX fee is designed to incentivize the entry of liquidity providing orders that can enhance the quality of the market and disincentivize certain liquidity removing orders that can degrade the quality of the market. Participants can manage their fees by making adjustments to their order entry practices, to decrease their entry of orders designed to target resting liquidity during periods of quote instability. And, as with the Nasdaq excess order fees, ideally, the fee will be applied to no one, because participants will adjust their trading activity to account for the pricing change. Thus, the Exchange believes that the \$0.0030 per share executed fee is reasonably related

²² See Nasdaq Rule 7018(a)(3)(m).

²³ See, Securities Exchange Act Release No. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (File No. SR-NASDAQ-2012-055).

²⁴ Id.

to the trading activity IEX is seeking to disincentivize.

IEX also believes that it is appropriate, reasonable and consistent with the Act, to charge a fee of \$0.0030 per share executed (or 0.3% of the total dollar value of the transaction for securities priced below \$1.00) that exceed the threshold described herein because it is within the transaction fee range charged by other exchanges²⁵ and consistent with Rule 610(c) of Regulation NMS.²⁶ Although the amount of the Crumbling Quote Remove Fee may not be adequate to fully disincentivize Members from deploying trading strategies designed to chase short-term price momentum during periods when the CQI is on, the Exchange is hopeful that it will at least reduce such activity based on the economic disincentives that the fee will provide.

Additionally, the Exchange believes that its proposed new fee code indicator, to be provided on execution reports, will provide transparency and predictability to Members as to applicable transaction fees. In this regard, IEX notes that Members will be able to maintain a tally of executions of liquidity taking orders potentially subject to the CQI fee on a monthly basis, and calculate whether the proportion of such orders is more than 5% of their total monthly volume on IEX. Using IEX execution reports, Members can calculate whether the sum of liquidity removing shares executed with Fee Code Indicator Q is more than 1,000,000 shares, and whether the sum of shares executed with Fee Code Indicator Q divided by the sum of total volume executed on IEX is more than 5%. In addition, IEX will provide the new fee code indicator to Members for at least one month prior to implementation of the Crumbling Quote Remove Fee so that

²⁵ See note 14 *supra*.

²⁶ 17 CFR 242.610(c)(1).

Members can assess the potential impact of the new fee on their IEX order entry practices, and make any adjustments that the Members determines are warranted. The Exchange does not believe that it would be useful to publicly disseminate when the CQI is on in a particular security through a proprietary market data feed in view of the fact that the CQI is only on for two milliseconds at a time, given the latencies inherent in dissemination and receipt of proprietary market data. IEX Rule 11.190(g) describes with specificity when the CQI is on. And, as discussed above, the data suggests that Members that would be potentially impacted by the Crumbling Quote Remove Fee are engaging in purposeful activity and are thus able to determine with reasonable certainty when the CQI is on.

Moreover, IEX believes that the fee will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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, because the fee is designed to reduce the entry of liquidity removing orders that can degrade the quality of the market and incentivize liquidity providing orders that can improve the quality of the market, thereby promoting greater order interaction and inhibiting potentially abusive trading practices.

Finally, and as discussed in the Burden on Competition section, the Exchange notes that it operates in a highly competitive market in which Members and market participants can readily direct order flow to competing venues if they deem fee levels to

be excessive.

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 may increase competition and hopefully draw additional volume to the

Exchange by enhancing the quality of executions across all participants when the CQI is on. As discussed in the Statutory Basis section, the proposed fee structure is a narrowly

tailored approach, designed to enhance the Exchange's market quality by incentivizing trading activity that the Exchange believes enhances the quality of its market. The

Exchange believes that the proposed fee would contribute to, rather than burden,

competition, as the fee is intended to incentivize Members and market participants to

send increased liquidity providing order flow to the Exchange, which may increase IEX's

liquidity and market quality, thereby enhancing the Exchange's ability to compete with

other exchanges. Further, the proposed fee is in line with fees charged by other

exchanges.

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 the proposed fee would only be assessed in some circumstances, those circumstances are not based on the type of Member entering the liquidity removing order but on the percent and amount of liquidity removing volume that the Member executes when the CQI is on. Further, the proposed fee is 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,²⁷ IEX has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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.²⁸

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.

²⁸ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 -); File No. SR-IEX-2017-27)

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

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 (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”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to increase the fees assessed under specified circumstances for execution of orders that take liquidity during periods when the IEX System has determined that a “crumbling quote” exists with respect to the Protected National Best Bid (“NBB”) or Protected National Best Offer

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.

(“NBO”) for such security.⁶

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

The Exchange proposes to amend its fee schedule, pursuant to IEX Rule 15.110 (a) and (c), to increase the fees assessed under specified circumstances for execution of orders that take liquidity during periods when the IEX System has determined that a “crumbling quote” exists with respect to the Protected NBB or Protected NBO for such security.

Pursuant to IEX Rule 11.190(g), in determining whether quote instability or a crumbling quote exists, the Exchange utilizes real time relative quoting activity of certain Protected Quotations⁷ and a proprietary mathematical calculation (the “quote instability

⁶ See, Rule 600(b)(42) under Regulation NMS.

⁷ Pursuant to Rule 11.190(g), the Protected Quotations of the New York Stock Exchange, Nasdaq

calculation”) to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security (“quote instability factor”). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange’s defined quote instability threshold, the System treats the quote as unstable and the crumbling quote indicator (“CQI”) is on. During all other times, the quote is considered stable, and the CQI is off. The System independently assesses the stability of the Protected NBB and Protected NBO for each security. When the System determines that a quote, either the Protected NBB or the Protected NBO, is unstable, the determination remains in effect at that price level for two milliseconds. The Exchange proposes to increase fees assessed for execution of buy (sell) orders that take liquidity at prices at or below (above) the NBO (NBB) during the two milliseconds when the CQI is on. Therefore, buy orders taking liquidity up to the Protected NBO and sell orders taking liquidity down to the Protected NBB when the CQI is on will be subject to the increased fee.

When CQI is on, Discretionary Peg orders⁸ and primary peg orders⁹ do not exercise price discretion to meet the limit price of an active (i.e., taking) order. Specifically, as set forth in Rule 11.190(b)(10), a Discretionary Peg order pegs to the less aggressive of the primary quote (i.e., NBB for buy orders and NBO for sell orders) or the order’s limit price, if any, but, will exercise price discretion in order to meet the limit price of an active order up to the less aggressive of the Midpoint Price or the order’s limit price, if any. However, a Discretionary Peg order will not exercise such price discretion

Stock Market, NYSE Arca, Nasdaq BX, Bats BZX Exchange, Bats BYX Exchange, Bats EDGX Exchange, and Bats EDGA Exchange.

⁸ See Rule 11.190(b)(10).

⁹ See Rule 11.190(b)(8).

when the CQI is on. Similarly, as set forth in Rule 11.190(b)(8), a primary peg order pegs to a price that is the less aggressive of one (1) minimum price variant (“MPV”) less aggressive than the primary quote (i.e., one MPV below (above) the NBB (NBO) for buy (sell) orders) or the order’s limit price, if any, but will exercise price discretion in order to meet the limit price of an active order up to the NBB (for buy orders) or down to the NBO (for sell orders), except when the CQI is on or if the order is resting at its limit price, if any.

By not permitting resting Discretionary Peg orders and primary peg orders to exercise price discretion during periods of quote instability, the Exchange is designed to protect such orders from unfavorable executions when its probabilistic model identifies that the market appears to be moving adversely to them. As noted above, when the IEX System determines that a quote (either the Protected NBB or the Protected NBO) is unstable, the determination, and corresponding limitation on Discretionary Peg and primary peg orders exercising price discretion, remains in effect at that price level for only two milliseconds. This limitation is designed to appropriately balance the protective benefits to Discretionary Peg and primary peg orders with the interest of avoiding potentially undue trading restrictions.

Based on market data analysis during June 2017, the Exchange identified that there are significant differences in short term markouts¹⁰ (and pro forma profit and loss¹¹) for resting and taking orders between executions when the CQI is on and off, regardless of whether the NBB (NBO) moves lower (higher) within two milliseconds of the

¹⁰ The term markouts refers to changes in the midpoint of the NBBO measured from the perspective of either the liquidity providing resting order or liquidity removing taking order over a specified period of time following the time of execution.

¹¹ For purposes of this analysis, a pro forma profit or loss is calculated as the difference between the midpoint of the NBBO at the time of the execution compared to one second after.

Exchange's determination of quote instability. Specifically, when the CQI is on, liquidity removing orders that execute on IEX (trading with a liquidity providing order resting on the order book, including but not limited to Discretionary Peg and primary peg orders) experience positive price markouts one second after the trade on a share basis 75.6% of the time, compared to 23.9% of the time when the CQI is off. Correspondingly, resting liquidity providing orders that trade when the CQI is on experience negative price markouts one second after the trade 75.6% of the time, compared to 23.9% of the time when CQI is off. Similarly, 72.1% of all orders received when the CQI is on (whether or not executed on IEX) arrive immediately prior to a favorable price move (based on one second markouts), compared to 18.2% of orders received when the CQI is off.

Moreover, the breakdown of orders entered and shares removed when the CQI is on or off evidences that certain trading strategies appear to involve entering liquidity taking orders targeting resting orders at prices that are likely to move adversely from the perspective of the resting order. Across all approximately 8,000 symbols available for trading on IEX, the CQI is on only 1.24 seconds per symbol per day on average (0.005% of the time during regular market hours),¹² but 30.4% of marketable orders¹³ are received during those time periods, which indicates that certain types of trading strategies are seeking to aggressively target liquidity providers during periods of quote instability.

The Exchange believes that this data is particularly significant and evidences that Members entering liquidity taking orders when the CQI is on appear to be able to engage in a form of latency arbitrage by leveraging fast proprietary market data feeds and

¹² On a volume weighted basis, the CQI is on for 6.50 seconds per day per symbol, 0.03% of the time during regular market hours.

¹³ An order is considered marketable for this analysis if it was a market order or its limit price is at or more aggressive than the far touch quotation.

connectivity along with predictive strategies to chase short-term price momentum and successfully target resting orders at unstable prices. IEX believes that these types of trading strategies, with concentrated and aggressive tactics during moments of quote instability, are detrimental to the experience of other IEX participants. IEX further believes that such trading strategies create disparate burdens on resting orders, particularly those that are displayed and therefore ineligible to benefit from the CQI.

Accordingly, to incentivize additional resting liquidity, including displayed liquidity, on IEX, the Exchange proposes to increase the fees applicable to orders that remove resting liquidity when the CQI is on if such orders constitute at least 5% of the Member's volume executed on IEX and at least 1,000,000 shares, on a monthly basis, measured on a per market participant identifier ("MPID") basis. As proposed, such orders that exceed the 5% and 1,000,000 share thresholds would be assessed a fee of \$0.0030 per each incremental share executed (or 0.3% of the total dollar value of the transaction for securities priced below \$1.00) that exceeds the threshold. For example, assume Member XYZ executed 100,000,000 shares through its MPID 1234 during a particular month, and 6,000,000 of such shares removed liquidity while the CQI was on. The 6,000,000 shares executed when the CQI was on exceed the threshold since such shares are more than 5% of MPID 1234's monthly volume (i.e., 5,000,000) and at least 1,000,000 shares. Member XYZ would therefore be charged the fee on 1,000,000 shares which is the incremental number of shares above 5% of the 100,000,000 shares executed by MPID 1234 during the month.

Setting the fee threshold at 5% and 1,000,000 shares is a narrowly tailored approach, designed to only charge the increased fee in circumstances where the Member

executes a meaningful portion of its volume via liquidity removing orders when the CQI is on, and not charge the fee for executions of this type that are more likely to be incidental to broader trading activity by the Member and not part of a specific trading strategy that targets resting liquidity during periods of quote instability. The Exchange proposes to refer to this pricing as the “Crumbing Quote Remove Fee” on the Fee Schedule with a Fee Code Indicator of “Q” to be provided by the Exchange on execution reports to Members removing liquidity when the CQI is on.

As proposed, to provide transparency about potential fees, the Exchange will begin providing Fee Code Indicator Q on execution reports at least one month prior to implementation of the Crumbing Quote Remove Fee so that Members can assess the impact of the new fee and make any corresponding adjustments to their trading strategies. IEX will announce the availability of new Fee Code Indicator Q approximately 30 days after effectiveness of this rule filing. IEX will provide at least ten business days’ notice of implementation of the proposed fee within 90 days of effectiveness of this rule filing.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁴ of the Act in general, and furthers the objectives of Sections 6(b)(4)¹⁵ 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. Additionally, IEX believes that the proposed fee is consistent with the investor protection objectives of Section 6(b)(5)¹⁶ of the Act in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

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

The proposed new Crumbling Quote Remove Fee is designed to enhance the Exchange's market quality by encouraging Members and other market participants to add more liquidity to the Exchange order book, which benefits all investors by deepening the Exchange's liquidity pool. Specifically, the Exchange believes that trading strategies that target resting liquidity during periods of quote instability seek to trade at prices that are about to become stale, and thus discourage other market participants from entering liquidity providing orders on the Exchange. Thus, the Exchange believes that the proposal is reasonable because it would create an added incentive for Members and other market participants to provide liquidity on IEX since the increased fee may result in fewer orders seeking to remove liquidity when the CQI is on, and concomitant overall better execution quality.

Other exchanges offer incentives in the form of rebates and/or reduced fees that are designed to encourage market participants to send increased levels of order flow to such exchanges. These typically take the form of lower fees and higher rebates for meeting specified volume tiers.¹⁷ These fee and rebate structures are typically justified by other exchanges on the basis that increased liquidity benefits all investors by deepening the exchange's liquidity pool, which provides price discovery and investor protection benefits.¹⁸ The Exchange also notes that other exchanges charge different fees (or provide rebates) to the buyer and seller to an execution, which are generally referred

¹⁷ See, e.g., New York Stock Exchange Price List 2017, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. See also, Nasdaq Rule 7018.

¹⁸ See, e.g., Securities Exchange Act Release No. 80034 (February 14, 2017), 82 FR 11275 (February 21, 2017) (File No. SR-BatsEDGX-2017-09).

to as either maker-taker or taker-maker pricing schemes. Typically, the exchange offering such pricing is seeking to incentivize orders that provide or remove liquidity, based on which type of orders receive a rebate. While these pricing schemes discriminate against the Member party to the trade that is charged a fee (in favor of the Member party to the trade that is paid a rebate) the Commission has not found these fees to be unfairly discriminatory in violation of the Act.¹⁹

Similarly, the proposal seeks to promote increased liquidity and price discovery on the Exchange by providing a fee designed to incentivize liquidity providing orders that can improve the quality of the market. The Exchange believes that, to the extent the fee is successful in reducing targeted and aggressive liquidity removing orders, it would contribute to investors' confidence in the fairness of transactions and the market generally, thereby benefiting multiple classes of market participants and supporting the public interest and investor protection purposes of the Act.

The Exchange believes that maker-taker and taker-maker pricing schemes in general create needless complexity in market structure in various ways and result in conflicts of interest between brokers and their customers. Accordingly, IEX has made a decision not to adopt rebate provisions in favor of a more transparent pricing structure that generally charges equal fees (or in some cases, no fee) for a particular trade to both the "maker" and "taker" of liquidity. Given this decision, IEX must use other means to incentivize orders to rest on its order book. IEX's execution quality is one important incentive, but this incentive can be undercut by trading strategies that target resting orders during periods of quote instability. Accordingly, IEX believes that the proposed

¹⁹ See note 18 supra.

Crumbing Quote Remove Fee is one reasonable way to compete with other exchanges for order flow, consistent with its alternative exchange model and without relying on rebates.

As discussed in the Purpose section, the increased fee would only be charged on incremental orders above the 5% and 1,000,000 share monthly thresholds that remove resting liquidity when the CQI is on. The Exchange believes that limiting the fee to such circumstances is reasonable and equitable because it would not apply when executions taking liquidity while the CQI is on are likely to be incidental and not part of a deliberate trading strategy that targets resting liquidity during periods of quote instability. Consequently, the Exchange believes that the proposed fee structure is not unfairly discriminatory because it is narrowly tailored to charge a fee only on trading activity that is indicative of a trading strategy that may adversely affect execution quality on IEX and is reasonably related to the purpose of encouraging liquidity providing orders on IEX without the use of rebates.

The Exchange also believes that it is appropriate, and consistent with the Act, to not charge a fee to Members that do not exceed the 5% and 1,000,000 share thresholds during the month in question. This flexibility is designed to address limited inadvertent liquidity removal when the CQI is on for Members whose order flow during such times is incidental. In addition, the Exchange believes it is appropriate, and consistent with the Act, to not charge a fee to Members for the execution of buy (sell) orders that take liquidity at prices above (below) the Protected NBO (NBB) during the two milliseconds when the CQI is on because such executions are not indicative of a trading strategy that targets resting orders at soon to be stale prices during periods of quote instability.

Further, the Exchange believes that the data from June 2017 supports the position that the proposed threshold is narrowly tailored to only charge the fee based on objective criteria indicating that execution of the orders in question reasonably appear to be part of a deliberate trading strategy that targets resting liquidity during periods of quote instability. Based on data from June 2017, the Exchange estimates that only 13 Members each using one unique MPID (out of 125 total Members trading through 158 MPIDS that traded on IEX during the month) would have been subject to the proposed fee, five of which would have paid less than \$1,500 in such fees.²⁰ The Members that were above the threshold also present a significantly different order entry profile than Members below the threshold with respect to orders entered when the CQI was on. For the 13 Member MPIDs above the threshold, 63.1% of such orders were marketable to the midpoint of the NBBO (64.3% for the eight Member MPIDs that would have paid more than \$1,500), while for Member MPIDs below this number was only 13.4%. The Exchange believes that this difference evidences that Members above the threshold were more likely to be engaging in a deliberate strategy to target resting orders at soon to be stale prices.²¹

The Exchange also believes that it is consistent with the Act and an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities to measure whether the threshold is reached on an MPID basis. As discussed above, the threshold is designed to narrowly focus on executions that appear to be part of a deliberate trading strategy that targets resting liquidity during periods of quote instability. The Exchange believes that Members that utilize multiple MPIDs

²⁰ The overall range would have been \$426.49 to \$123,897.20.

²¹ Analysis of trading on IEX during April, May and July is consistent with the June data analysis.

generally use different MPIDs for different trading strategies or customers. Therefore, the Exchange believes that measuring by MPID is a more precise manner of assessing whether a Member's trading strategy (or that of a customer) is part of a deliberate trading strategy that targets resting liquidity during periods of quote instability.

Accordingly, the Exchange submits that the proposed threshold is narrowly tailored to address particular trading strategies (rather than particular classes of Members) that may operate to disincentivize the entry of resting orders by other market participants. Specifically, and as discussed above, to the extent the proposed fee is successful in reducing such trading strategies on IEX, it may result in market quality improvements which could benefit multiple classes of market participants.

The Exchange further believes that charging the Crumbling Quote Remove Fee only to the liquidity remover is equitable and not unfairly discriminatory because it is designed to incentivize order flow that enhances the quality of trading on the Exchange and disincentivize trading that does not. As discussed above, IEX believes that there are precedents for exchanges to charge different fees based upon meeting (or not meeting) particular criteria, as well as maker-taker and taker-maker pricing structures whereby the liquidity adder and remover to a trade are subject to differing fees and rebates, to incentivize certain types of trading activity. Fees and rebates based on maker-taker and taker-maker pricing as well as on volume-based tiers have been widely adopted by equities exchanges. And in some cases, maker-taker or taker-maker pricing has been combined with volume-based tiers that result in differential fees and rebates for different exchange members. These fee structures have been permitted by the Commission. For example, Bats EDGA Exchange, Inc. ("EDGA") previously offered a rebate contingent

upon adding specified amounts of liquidity to EDGA.²² Notwithstanding that certain classes of members (e.g., exchange routing brokers) do not typically add liquidity on competing exchanges, this fee structure was justified by EDGA on the basis that, generally, it encourages growth in liquidity on EDGA and applies equally to all members.²³ Similarly, while the proposed IEX fee structure will result in the Crumbling Quote Remove Fee being imposed only on members using specific trading strategies, it is also designed to attract liquidity to IEX and applies equally to all Members.

The Exchange also notes that there is precedent to charge a different fee (or pay a different rebate) based on the execution price of an order. The Bats BZX Exchange, Inc. pays a rebate of \$0.0017 to a non-displayed order that adds liquidity, while if such an order receives price improvement it does not receive a rebate or pay a fee.²⁴

Thus, maker-taker, taker-maker, and volume tier based fee structures (separately or in combination) have been adopted by other exchanges on the basis that they may discriminate in favor of certain types of members but not in an unfairly discriminatory manner in violation of the Act. As with such fee structures, the Exchange believes that the proposed fee change is equitable and not unfairly discriminatory because it is narrowly tailored to disincentive to all Members from deploying trading strategies designed to chase short-term price momentum during periods when the CQI is on and thus potentially adversely impact liquidity providing orders. IEX believes that, to the extent it is successful in this regard, the proposed fee structure may lead to increased

²² See Securities Exchange Act Release No. 80976 (June 20, 2017), 82 FR 28920 (June 26, 2017) (SR-BatsEDGA-2017-18).

²³ See, e.g., Securities Exchange Act Release No. 69066 (March 7, 2013), 78 FR 16023 (March 13, 2013) (SR-EDGA-2013-10).

²⁴ See Bats BZX Exchange Fee Schedule, available at: http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

liquidity providing orders on IEX which could benefit multiple classes of market participants through increased trading opportunities and reduced latency arbitrage.

Further, the Exchange notes that the Nasdaq Stock Market (“Nasdaq”) charges excess order fees (ranging from \$0.005 to \$0.01 per excess weighted order) on certain members that have a relatively high ratio of orders entered away from the NBBO to orders executed in whole or in part, subject to a carve-outs for specified lower volume members and certain registered market makers.²⁵ In its rule filing adopting the fee Nasdaq justified it as designed to achieve improvements in the quality of displayed liquidity to the benefit of all market participants.²⁶ Nasdaq also asserted that the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices, noting that “[i]deally, the fee will be applied to no one because market participants will adjust their behavior to avoid the fee.”²⁷

Similarly, the proposed IEX fee is designed to incentivize the entry of liquidity providing orders that can enhance the quality of the market and disincentivize certain liquidity removing orders that can degrade the quality of the market. Participants can manage their fees by making adjustments to their order entry practices, to decrease their entry of orders designed to target resting liquidity during periods of quote instability. And, as with the Nasdaq excess order fees, ideally, the fee will be applied to no one, because participants will adjust their trading activity to account for the pricing change. Thus, the Exchange believes that the \$0.0030 per share executed fee is reasonably related to the trading activity IEX is seeking to disincentivize.

²⁵ See Nasdaq Rule 7018(a)(3)(m).

²⁶ See, Securities Exchange Act Release No. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (File No. SR-NASDAQ-2012-055).

²⁷ Id.

IEX also believes that it is appropriate, reasonable and consistent with the Act, to charge a fee of \$0.0030 per share executed (or 0.3% of the total dollar value of the transaction for securities priced below \$1.00) that exceed the threshold described herein because it is within the transaction fee range charged by other exchanges²⁸ and consistent with Rule 610(c) of Regulation NMS.²⁹ Although the amount of the Crumbling Quote Remove Fee may not be adequate to fully disincentivize Members from deploying trading strategies designed to chase short-term price momentum during periods when the CQI is on, the Exchange is hopeful that it will at least reduce such activity based on the economic disincentives that the fee will provide.

Additionally, the Exchange believes that its proposed new fee code indicator, to be provided on execution reports, will provide transparency and predictability to Members as to applicable transaction fees. In this regard, IEX notes that Members will be able to maintain a tally of executions of liquidity taking orders potentially subject to the CQI fee on a monthly basis, and calculate whether the proportion of such orders is more than 5% of their total monthly volume on IEX. Using IEX execution reports, Members can calculate whether the sum of liquidity removing shares executed with Fee Code Indicator Q is more than 1,000,000 shares, and whether the sum of shares executed with Fee Code Indicator Q divided by the sum of total volume executed on IEX is more than 5%. In addition, IEX will provide the new fee code indicator to Members for at least one month prior to implementation of the Crumbling Quote Remove Fee so that Members can assess the potential impact of the new fee on their IEX order entry practices, and make any adjustments that the Members determines are warranted. The

²⁸ See note 17 *supra*.

²⁹ 17 CFR 242.610(c)(1).

Exchange does not believe that it would be useful to publicly disseminate when the CQI is on in a particular security through a proprietary market data feed in view of the fact that the CQI is only on for two milliseconds at a time, given the latencies inherent in dissemination and receipt of proprietary market data. IEX Rule 11.190(g) describes with specificity when the CQI is on. And, as discussed above, the data suggests that Members that would be potentially impacted by the Crumbling Quote Remove Fee are engaging in purposeful activity and are thus able to determine with reasonable certainty when the CQI is on.

Moreover, IEX believes that the fee will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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, because the fee is designed to reduce the entry of liquidity removing orders that can degrade the quality of the market and incentivize liquidity providing orders that can improve the quality of the market, thereby promoting greater order interaction and inhibiting potentially abusive trading practices.

Finally, and as discussed in the Burden on Competition section, the Exchange notes that it operates in a highly competitive market in which Members and market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

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 structure may increase competition and hopefully draw additional volume to the Exchange by enhancing the quality of executions across all participants when the CQI is on. As discussed in the Statutory Basis section, the proposed fee structure is a narrowly tailored approach, designed to enhance the Exchange's market quality by incentivizing trading activity that the Exchange believes enhances the quality of its market. The Exchange believes that the proposed fee would contribute to, rather than burden, competition, as the fee is intended to incentivize Members and market participants to send increased liquidity providing order flow to the Exchange, which may increase IEX's liquidity and market quality, thereby enhancing the Exchange's ability to compete with other exchanges. Further, the proposed fee is in line with fees charged by other exchanges.

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 the proposed fee would only be assessed in some circumstances, those circumstances are not based on the type of Member entering the liquidity removing order but on the percent and amount of liquidity removing volume that the Member executes when the CQI is on. Further, the proposed fee is 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)³⁰ of the Act.

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)³¹ 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

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 15 U.S.C. 78s(b)(2)(B).

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-2017-27 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-2017-27. 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 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. 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-2017-27 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.³²

³² 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 [September 1, 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, [T]to the extent a Member receives multiple Fee Codes on an execution, the lower fee shall apply.
- [To the extent a Member qualifies for lower fees, pursuant to this Fee Schedule, the lower fees 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	Displayed Match Fee	FREE	
	Taking Displayed Liquidity		
	Providing Displayed Liquidity		
I	Non-Displayed Match Fee	\$0.0009	0.30% of TDVT
	Taking Non-Displayed Liquidity*		
	Providing Non-Displayed Liquidity		
S	Internalization Fee	FREE	
	Member executes against resting liquidity provided by such Member		
<u>Q</u>	<u>Crumbling Quote Remove Fee Indicator</u>	<u>\$0.0030**</u>	<u>0.30% of TDVT**</u>
	<u>Taking Liquidity During Periods of Quote Instability, as defined in IEX Rule 11.190(g)</u>		
Alpha	Routing and removing liquidity (all routing options)***	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).

Registration and Processing Fees – No Change.