

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99471; File No. SR-IEX-2024-04)

February 5, 2024

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Pursuant to IEX Rule 15.110 to Amend IEX's Fee Schedule

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 January 24, 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, 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 Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend its Fee Schedule⁶, pursuant to IEX Rule 15.110(a) and (c) (the "Fee Schedule"), to revise the Fee Codes⁷ applicable to transactions that involve a Post Only order that

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.

⁶ See Fee Schedule at <https://www.iexexchange.io/resources/trading/fee-schedule> for the complete list of fee code combinations and their corresponding fees.

⁷ Fee Codes are identified on each execution report message from the Exchange in the Trade Liquidity Indicator (FIX tag 9730) field. See "Transaction Fees/Definitions" on the Fee Schedule.

executes on entry. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁸ and the Exchange plans to implement the changes on February 15, 2024.

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 its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to revise the Fee Codes applicable to transactions that involve a Post Only order that executes on entry. IEX recently filed a rule change to introduce a Post Only order parameter instruction and a Trade Now instruction.⁹ The Post Only Filing was effective on filing but will not be implemented until February 15, 2024.¹⁰

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ See Securities Exchange Act Release No. 98988 (November 20, 2023), 88 FR 82926 (November 27, 2023) (SR-IEX-2023-13) (“Post Only Filing”).

¹⁰ See IEX Trading Alert 2024-003, available at <https://iextrading.com/alerts/#/239>.

As described in the Post Only Filing, Members¹¹ may attach a Post Only parameter instruction to any displayable, non-routable order priced at or above \$1.00 per share (i.e., a Post Only order).¹² A Post Only order will not remove contra-side liquidity from the IEX Order Book¹³ on entry (and will rest on the Order Book as a displayed liquidity adding order), except in two specific circumstances: (i) if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided (the “Sum of Fees”), or (ii) if the contra-side resting order with which the incoming order could match is a non-displayed order with a “Trade Now” instruction.¹⁴ When an incoming Post Only order matches a resting order with a Trade Now instruction, the resting order converts into an executable order that removes liquidity against the incoming Post Only order, and the incoming Post Only order becomes the liquidity adding order.

Fee Schedule Changes

IEX proposes to introduce two new Fee Codes, to specify (1) when a Post Only order executed on entry, and (2) when a resting non-displayed order with a Trade Now instruction removed liquidity from a Post Only order that executed on entry.

Specifically, as proposed, Fee Code Y will be included on any execution report for a Post Only order that executes on entry, and Fee Code W will be included on any execution report for a resting order with a Trade Now instruction that removes liquidity against an

¹¹ See IEX Rule 1.160(s).

¹² If a Member submits a Post Only order that is priced below \$1.00 per share, the Exchange will disregard the Post Only instruction. See IEX Rule 11.190(b)(20)(A).

¹³ See IEX Rule 1.160(p).

¹⁴ See IEX Rule 11.190(b)(21).

incoming liquidity-adding Post Only order. IEX proposes to add these Fee Codes to the Fee Code Modifiers table on the IEX Fee Schedule as follows:

Additional Fee Codes	Description	Fee
Y	Post Only order executes on entry	See Relevant Fee Code Combinations Below
W	Resting order removes against Post Only order	See Relevant Fee Code Combinations Below

Additionally, IEX proposes to add four new Fee Code Combinations to the Additional Fee Code Combinations and Associated Fees table that reflect the fees IEX will assess for an execution involving a Post Only order that executes on entry:

- Fee Code Combination TIY, would apply to a Post Only order priced at \$1.00 or more that removes non-displayed liquidity on entry. The fees associated with Fee Code Combination TIY are the same as the fees associated with Fee Code Combination TI, the fee code for an order that removes non-displayed liquidity on entry (currently \$0.0010 per share). IEX would include Fee Code Combination TIY on execution reports to specify that a Post Only order executed on entry because the Sum of Fees was less than the value of the execution if the order had added displayed liquidity on the Exchange. Because the Exchange will disregard the Post Only instruction on orders priced less than \$1.00 per share (“sub-dollar”)¹⁵, IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table read “N/A”.¹⁶
- Fee Code Combination TLY, would apply to a Post Only order priced at \$1.00 or more per share that removes displayed liquidity on entry. The fees associated with Fee Code Combination TLY are the same as the fees associated with Fee Code Combination TL, the fee code for an order that removes displayed liquidity on entry (currently \$0.0010 per share). IEX would include Fee Code Combination TLY on execution reports to specify that a Post Only order executed on entry because the Sum of Fees was less than the value of the execution if the order had added displayed liquidity

¹⁵ See *supra* note 12.

¹⁶ An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting non-displayed order will result in a Fee Code Combination of TI (“Removes non-displayed liquidity”) on the execution report and be charged the normal sub-dollar dark taking fee of 0.10% of the Total Dollar Value (“TDV”).

on the Exchange. Because the Exchange will disregard the Post Only instruction on sub-dollar orders¹⁷, IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table read “N/A”.¹⁸

- Fee Code Combination MLY, would apply to a Post Only order priced at \$1.00 or more per share that executes on entry with a contra-side order with the Trade Now instruction. The fees associated with Fee Code Combination MLY are the same as the fees associated with Fee Code Combination ML, the fee code for an order that adds displayed liquidity (currently a rebate of \$0.0004 per share). IEX would include Fee Code Combination MLY on execution reports to specify that although the order executed on entry, it executed as the adder of displayed liquidity because of the contra-side order’s Trade Now instruction. Because the Exchange will disregard the Post Only instruction on sub-dollar orders¹⁹, IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees table column read “N/A”.²⁰
- Fee Code Combination TLW, would apply to a resting non-displayed order with the Trade Now instruction that executes against an incoming Post Only order priced at \$1.00 or more per share. The fees associated with Fee Code Combination TLW are the same as the fees associated with Fee Code Combination MI, the fee code for an execution that adds non-displayed liquidity (currently \$0.0010 per share for executions at or above \$1.00). IEX would include Fee Code Combination TLW on execution reports that the order executed as the taker of displayed liquidity. Because the Exchange will disregard the Post Only instruction on an incoming sub-dollar Post Only order²¹, that order will not trigger a resting order with the “Trade Now” instruction to become the taking order. Therefore, Fee Code Combination TLW would never apply to a resting non-displayed order that matches with an incoming sub-dollar order with a Post Only instruction, and IEX proposes to have the “Executions below \$1.00” column of the Additional Fee Code Combinations and Associated Fees

¹⁷ See supra note 12.

¹⁸ An incoming sub-dollar order with a disregarded Post Only instruction that executes on entry with a resting displayed order will result in a Fee Code Combination of TL (“Removes displayed liquidity”) on the execution report and be charged the normal sub-dollar lit taking fee of 0.09% of the TDV.

¹⁹ See supra note 12.

²⁰ An incoming sub-dollar order with a disregarded Post Only instruction will not trigger a resting order with the “Trade Now” instruction to become the taking order and will not be treated as the making order. Thus, Fee Code Combination MLY would never apply. If the incoming order matched with a resting non-displayed or displayed order, it will result in a Fee Code Combination of TL or TI, with fees of 0.09% or 0.10% of TDV, respectively.

²¹ See supra note 12.

table column read “N/A”.

IEX proposes to add these Fee Codes to the Additional Fee Code Combinations and Associated Fees table on the IEX Fee Schedule as follows:

Fee Codes	Description	Executions at or above \$1.00	Executions below \$1.00
MLY	Post Only order adds liquidity against resting non-displayed order	(\$0.0004)	N/A
TIY	Post Only order removes non-displayed liquidity	\$0.0010	N/A
TLY	Post Only order removes displayed liquidity	\$0.0010	N/A
TLW	Resting non-displayed order removes liquidity against incoming Post Only order	\$0.0010	N/A

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(4)²³ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX Members and persons using its facilities. As described in the Purpose section, these proposed Fee Code changes will not change the fees the Exchange charges for impacted orders but will simply provide additional information with respect to such fees. Therefore, the Exchange does not believe that adding this additional information raises any new or novel issues not already considered by the Commission. IEX also believes that the proposed rule change is nondiscriminatory since all Members are eligible to enter orders with Post Only and/or Trade Now instructions.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(4).

Additionally, IEX believes that the proposed changes to the Fee Schedule are consistent with the investor protection objectives of Section 6(b)(5)²⁴ of the Act, in particular, in that they are designed 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 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; and are not designed to permit unfair discrimination between customers, brokers, or dealers. IEX believes that providing additional specificity to Members on execution reports about the circumstances under which a Post Only order executed on entry, as well as when an order with a Trade Now instruction executed as a liquidity remover, will assist Members with their order routing strategies, thereby facilitating transactions in securities. Further, IEX believes that specifying that these new Fee Code Combinations do not apply to sub-dollar executions because IEX disregards the Post Only instruction on orders priced below \$1.00 per share will also assist Members with their order routing strategies, thereby facilitating transactions in securities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed Fee Code changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described in the Purpose and Statutory Basis

²⁴ 15 U.S.C. 78f(b)(5).

sections, the Exchange is not proposing to change any fees but merely to provide additional information to Members regarding certain executions.

The Exchange also 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. The proposed fees will apply to all Members in the same manner, as discussed in the Statutory Basis section. Accordingly, the Exchange does not believe that these changes will have any impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)²⁵ 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)²⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁶ 15 U.S.C. 78s(b)(2)(B).

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-2024-04 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-2024-04. 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 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-2024-04 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.²⁷

Sherry R. Haywood,

Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).