

Required fields are shown with yellow backgrounds and asterisks.

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

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

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

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

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

Proposed rule change related to listing fees.

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 * Claudia Last Name * Crowley
 Title * Chief Regulatory Officer
 E-mail * claudia.crowley@iextrading.com
 Telephone * (646) 343-2041 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 09/13/2017
 By Claudia Crowley
 (Name *)

Chief Regulatory Officer

claudia.crowley@iextrading.com

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 amend Rule 14.601, which is currently reserved, to (i) adopt an annual fee of \$50,000 for companies listing on the Exchange and (ii) provide for specified fee credits.

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 comments on the proposed rule change are:

¹ 15 U.S.C. 78s(b)(1).

² 17 CRF 240.19b-4.

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

On June 17, 2016, the Commission granted IEX's application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.³ The Exchange plans to begin a listing program in 2017 and is proposing to adopt a simple fee structure for listed companies.⁴ Specifically, the Exchange proposes to amend Rule 14.601 to (i) adopt an all-inclusive annual fee of \$50,000 for companies listing on the Exchange and (ii) provide for specified fee credits for a company that is approved for IEX listing⁵ and, prior to or within 120 calendar days of the first IEX listing, announces its intent to transfer its listing to IEX in the company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act⁶ announcing its intent to withdraw its securities from listing on its current national securities exchange.

³ See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

⁴ The Exchange's listing program launch is pending Commission rulemaking to amend Rule 146 under Section 18 of the Securities Act of 1933 ("Securities Act") to designate securities listed on the Exchange as covered securities for purposes of Section 18(b) of the Securities Act. See Securities Act Release No. 10390 (July 14, 2017) 82 FR 33839 (July 21, 2017) (File No. S7-06-17) proposing such rule amendment.

⁵ See IEX Rule 14.202

⁶ Rule 12d2-2(c) under the Act specifies, among other things, the requirements applicable to an issuer of a class of securities listed on a national securities exchange to notify the Commission of its withdrawal of such securities from listing on such national securities exchange. Subparagraph 2(ii) thereto requires that the issuer must provide notice to its national securities exchange of such determination no fewer than 10 days before notification to the Commission. Subparagraph 2(iii) thereto requires that "[c]ontemporaneous with providing written notice to the exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site."

As proposed, paragraph (a) of Rule 14.601 contains introductory text stating that the rule sets forth the required listing fees. Paragraph (b) specifies a \$50,000 all-inclusive annual listing fee that will be payable annually by each listed company on January 1st of each year for the upcoming calendar year, subject to fee credits as specified in paragraph (c) and described more fully below. The annual listing fee will not be charged in the first calendar year of a company's listing on IEX, but thereafter would be the only fee payable by a listed company per year for all aspects of its listing. The Exchange is not proposing to charge application fees, entry fees, fees for the listing of additional shares, recordkeeping fees, substitution listing fees, fees for a written interpretation of listing rules or hearing fees. All listed companies will be subject to the same annual listing fee, without differentiation based on the number of shares outstanding, unless eligible for a fee credit as described below. Paragraph (b) also provides that the annual fee will be subject to a pro-rata refund if the company ceases to be listed on IEX during the calendar year for which such fee was paid. Paragraph (d) specifies that the Exchange is not proposing to charge any other listing fees.

The Exchange proposes to provide a fee credit to any company that is approved for IEX listing and prior to or within 120 calendar days of the first IEX listing, announces its intent to transfer its listing to IEX in the company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act⁷ announcing its intent to withdraw its securities from listing on its current national securities exchange. The credit will also apply to the first IEX listing if such listing is a transfer from another national securities exchange. The Exchange will provide notice of the first listing to the issuer community on the day when

⁷ Id.

the first listing occurs. The fee credit will be the greater of \$250,000 or the amount of any nonrefundable listing fees actually paid by the company to another listing exchange during the calendar year in which it lists on IEX if the company is no longer listed on such other exchange upon listing on IEX. The fee credit may only be used to offset the IEX all-inclusive listing fee.⁸

Notwithstanding the fee credit, IEX will have sufficient resources available for its listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected. Specifically, as described in the Commission's order approving IEX's exchange application, the Exchange and IEX Group, Inc. (its parent) have entered into an agreement that requires IEX Group, Inc. to provide adequate funding for the Exchange's operations, including regulation of the Exchange.⁹

(b) Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁰ of the Act in general, and furthers the objectives of Sections 6(b)(4)¹¹ 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, issuers and other persons using its facilities. Additionally, IEX believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5)¹² of the Act, in particular, in that they are 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

⁸ See proposed Rule 14.601(b).

⁹ See *supra* note 3.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, IEX is a new entrant in the exchange listing market and expects to face intense competition from the New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market (“NASDAQ”), which, IEX believes, essentially operate as a duopoly in the U.S. listing market with the vast majority of operating companies listed on U.S. securities exchanges listed on those two. As discussed more fully below, IEX’s proposed simple low cost flat-fee structure, combined with the limited fee credit, as well as no fee in the first year of listing, is designed to address the significant competitive challenges. Moreover, in view of the competition among listing exchanges, whereby companies can easily choose not to list on IEX, the fees that IEX can charge listed companies are constrained by the fees charged by its competitors and IEX cannot charge fees in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

As described more fully below, IEX’s proposed listing fees and credits are available to all listed companies in a consistent and transparent manner, treating similarly situated companies similarly. IEX has chosen to structure its listing fees differently than NYSE and NASDAQ, which are generally based on shares outstanding. This structure has existed for many years, and has been justified on the basis that companies with fewer shares outstanding tend to be smaller companies, which may use fewer of the listing exchange’s services and be more willing to forgo an exchange listing if it costs more.¹³ However, the Exchange does not believe that the number of shares outstanding of a particular company necessarily corresponds to the size of the company. To the contrary,

¹³ See Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-087).

there are a variety of examples that demonstrate that shares outstanding does not correlate to larger market capitalization. This fee structure thus results in similarly situated companies being charged materially different listing fees. For example, Conagra Brands, Inc. (symbol: CAG), Fleetcor Technologies Inc. (symbol: FLT), and Autozone Inc. (symbol: AZO) each have similar market capitalizations (\$13.5 billion, \$13.1 billion, and \$14.7 billion respectively) but because of differences in shares outstanding, we estimate that CAG paid an annual listing fee in 2017 to NYSE of \$436,438 per year while FLT paid \$96,473 and AZO paid \$59,500. Similarly, NVIDIA Corp (symbol: NVDA) and The Priceline Group Inc. (symbol: PCLN) each have similar market capitalizations (\$99 billion and \$87.8 billion respectively) but because of differences in shares outstanding, we estimate that NVDA paid an annual listing fee in 2017 to NASDAQ of \$155,000 while PCLN paid \$55,000. And we estimate that Biocryst Pharmaceuticals Inc. (symbol: BCRX), with a market capitalization of only \$397.3 million, paid a \$100,000 annual listing fee to NASDAQ in 2017, almost double the PCLN fee notwithstanding that PCLN's market capitalization is approximately 221 times greater (\$87.4 billion greater) than BCRX's market capitalization.¹⁴

In addition, a company that has made the decision to effect a forward stock split will, under the existing exchange pricing structure, be charged double their previous listing fee (subject to any relevant maximum fees as discussed below) despite the fact that the company has not changed in structure or market capitalization.

IEX also does not believe that smaller companies use fewer listing exchange

¹⁴ Market capitalization estimates are based on Bloomberg data as of August 28, 2017. NYSE and NASDAQ listing fee estimates are based on listing fees reflected in Section 902 of the NYSE Listed Company Manual and the NASDAQ Rule 5900 Series (as applicable) and assumes (for NASDAQ) that each company paid the all-inclusive annual listing fee. Listing fee estimates are based on shares outstanding as reflected in Bloomberg data as of August 28, 2017.

services. To the contrary, the Exchange believes that larger companies generally use fewer regulatory services than smaller companies since they tend to be more consistently above the continued listing requirements, and also tend to utilize more sophisticated advisors for interactions with the listing exchange. Thus, the Exchange believes that its simple listing fee and credit structure is a more reasonable and equitable approach, as described below.

The Exchange believes that \$50,000 per year for the all-inclusive annual listing fee is fair and reasonable based on IEX's anticipated costs to support and maintain a listing business, including its listing compliance program. IEX also notes that the proposed fee is less than all NYSE fees, within the range of NASDAQ fees, and materially less than the maximum annual fees charged by each of NYSE and NASDAQ. Currently, annual listing fees for NYSE range from \$59,500 to \$500,000,¹⁵ while annual listing fees for NASDAQ range from \$32,000 to \$155,000,¹⁶ each depending on the company's total shares outstanding. The all-inclusive annual listing fees applicable to companies listed on the NASDAQ Global Select Market range from \$45,000 - \$155,000.¹⁷ IEX notes that its listing standards are substantially similar to the listing standards for NASDAQ Global Select market and therefore believes that it is most relevant to compare the IEX proposed all-inclusive annual listing fee to the NASDAQ Global Select Market all-inclusive annual listing fee range.

IEX also believes that it is reasonable to structure its fee as an all-inclusive fee.

NASDAQ has begun to structure its annual listing fees as an all-inclusive fee, noting that

¹⁵ See Sections 902.02 and 902.03 of the NYSE Listed Company Manual.

¹⁶ See NASDAQ Rule 5920(c) for NASDAQ Capital Market annual fees, Rule 5910(c) for NASDAQ Global and Global Select annual fees, and IM-5910-1 for the all inclusive annual listing fees applicable to companies listed on the NASDAQ Global Market (including the Global Select Market).

¹⁷ Id.

such a fee structure simplifies billing and provides transparency and certainty to companies as to the annual cost of listing.¹⁸ IEX also believes that such considerations warrant use of an all-inclusive fee.

IEX further believes that it is reasonable to provide a fee credit under the terms described in the Purpose section. Transferring a listing to a new exchange is a significant decision for a public company, and the Exchange anticipates that NYSE and NASDAQ will each actively seek to retain listed companies considering transferring their listing to IEX. Accordingly, the Exchange believes that although listing on IEX will provide certain benefits to issuers compared to listing on NYSE and NASDAQ – such as its investor and issuer focused model – the Exchange also believes that meaningful fee credits are initially necessary to establish its listing program quickly.

As the Commission has explicitly acknowledged, the current listing market is highly concentrated, noting that, “[e]ntrant exchanges can... face barriers to entry related to reputation. Exchanges that enter the market may not be able to quickly establish a strong reputation for high quality listings, which may adversely affect their ability to compete with incumbent exchanges. This lack of reputation may discourage both investors and issuers from transacting or listing on an entrant exchange, which may reinforce an entrant exchange’s lack of reputation.”¹⁹

As proposed, IEX’s fee credit is designed to address these significant competitive challenges, and quickly establish a strong reputation for high quality listings. Based on discussions with companies currently listed on NYSE and NASDAQ, the Exchange believes that a meaningful fee credit is necessary to incentivize currently listed

¹⁸ See, e.g., Securities Exchange Act Release No. 78149 (June 24, 2016), 81 FR 42388 (June 29, 2016) (SR-NASDAQ-2016-085).

¹⁹ See Securities Act Release No. 10390 (July 14, 2017), 82 FR 33839 (July 21, 2017) (File No. S7-06-17).

companies to transfer their listing to IEX. In this regard, companies generally view a listing transfer as a long-term commitment and therefore the financial incentive should align with such long-term commitment. IEX further believes, based on these discussions, that in order to be meaningful the fee credit must accomplish two objectives: provide at least five years of free listing and cover the listing fees already paid by the company in the year of listing on IEX.²⁰ In order to address both objectives, the fee credit will be for a minimum of \$250,000 (to cover five years of listing fees) or the greater of the amount of any nonrefundable listing fee actually paid by the company to another listing exchange during the calendar year in which it lists on IEX if the company is no longer listed on such other exchange upon listing on IEX.

Further, the Exchange believes that it is reasonable, and consistent with an equitable allocation of listing fees to provide a larger fee credit to companies that have already paid comparatively larger listing fees to NYSE or NASDAQ, which for some NYSE companies is as high as \$500,000.²¹ In this regard, the Exchange believes that an NYSE or NASDAQ listed company that has paid such larger listing fees may require a corresponding credit in order to incentivize the company to transfer its listing to IEX. Accordingly, the Exchange believes that providing an enhanced credit is not an inequitable allocation of fees because it merely operates to address the potential disincentive to list that may exist for a company that has paid listing fees higher than \$250,000. All similarly situated companies will receive the same credit.

The Exchange notes that there is precedent to provide a listing fee credit based on

²⁰ In the event that the Exchange proposes increases to its listing fees, such increases will include a grandfathering provision for companies that have remaining credits available so that each such company obtains the contemplated years of free listing as proposed herein, subject to Commission filing and effectiveness.

²¹ See Section 902 of the NYSE Listed Company Manual.

the amount of listing fees paid to another exchange. For example, NASDAQ Rules provide that NASDAQ waives a portion of its annual fee in the case of securities that transfer to NASDAQ, by providing such companies with a credit in the pro-rated amount of any annual listing fee paid to its prior listing exchange for the period of time after the transfer, which is used to offset NASDAQ listing fees for the first year of listing.²² In its rule filing adopting this credit,²³ NASDAQ (then a subsidiary of the National Association of Securities Dealers, Inc.), noted that the credit would remove impediments to and perfect the mechanism of a free and open market and a national market system by removing an impediment to issuers transferring from another market to NASDAQ. Similarly, IEX's proposed enhanced listing fee credit for a company that paid more than \$250,000 in listing fees in the year of its transfer to IEX is designed to incentivize such companies to transfer to IEX by providing a credit for listing fees actually paid to another exchange in the year of transfer, thereby removing a potential impediment to such transfers. Further, the Exchange notes that NYSE and Nasdaq each offer incentives to certain listed companies that transfer from the other market in the form of specified products and services that are valued as high as \$757,500 for a transfer from NYSE to Nasdaq and \$263,000 for a transfer from Nasdaq to NYSE.²⁴ Similarly, the IEX's

²² See NASDAQ IM-5900-4 (Waiver of Certain Annual Listing Fees Upon Transfer of a Non-Nasdaq Exchange Listed Security).

²³ See Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR-NASD-2006-047).

²⁴ See Section 907.00 of the NYSE Listed Company Manual and Nasdaq Rule IM-5900-7. The Exchange notes that the transfer incentive values are provided over multiple years. Further, the value of the Nasdaq incentives noted are for listed companies with a market capitalization of \$5 billion that transfer from NYSE to the Nasdaq Global Market or Global Select Market. Listed companies that transfer from NYSE to the Nasdaq Global Market or Global Select Market with market capitalization of up to \$750 million and between \$750 million or more but less than \$5 billion receive incentives over multiple years in the form of specified products and services valued at an aggregate of \$144,500 and \$553,500 respectively. The value of the NYSE incentives noted are for listed companies with a global market value of \$400 million or more that transfer from another national securities exchange to NYSE. Listed companies with a global market

proposed credit is designed to incentivize companies listed on other markets to transfer their listing to IEX. Thus, IEX believes that the monetary value of its proposed fee credit transfer incentives is comparable to the monetary value of the transfer incentives offered by NYSE and NASDAQ.

Moreover, as discussed above, both NYSE and NASDAQ charge listing fees predominantly based on the number of shares outstanding, such that a company with fewer shares outstanding is generally charged a lower listing fee than a company with a larger number of shares outstanding. By providing a higher credit to a company that has paid listing fees in excess of \$250,000 to NYSE, the IEX credit is designed to take into account the fact that some issuers have been subject to higher fees based on their number of shares outstanding, and to provide issuers a credit incentive on that basis.

The Exchange believes that limiting the fee credit to companies that announce their intent to transfer listing to IEX prior to or within 120 calendar days of the first IEX listing, as described in the Purpose Section, will operate as an incentive to companies listed on NYSE or NASDAQ to transfer their listing to IEX expeditiously in order to enable the Exchange to achieve critical mass relatively quickly, in a highly competitive environment. As described in the Purpose Section, the Exchange will provide notice to the issuer community on the day when the first listing occurs, and IEX believes that the 120 calendar day period will provide ample time for any company that meets IEX's listing requirements to successfully complete the clearance²⁵ and application processes,²⁶ issue the required press release within 120 calendar days of the first IEX listing, and thus

value of less than \$400 million receive incentives over 24 calendar months in the form of specified products and services valued at \$153,000.

²⁵ See IEX Rule 14.201.

²⁶ See IEX Rule 14.202.

receive the fee credit. As the Commission has noted, and as discussed above, if a new listing exchange does not quickly establish a strong reputation for high quality listings, it may adversely affect its ability to compete with incumbent exchanges.²⁷ Structuring the availability of the fee credit within the specified time window is designed to address the imperative to quickly establish a strong reputation for high quality listings.

The Exchange believes that this structure is reasonable, not an inequitable allocation of fees, and not unfairly discriminatory since while the time window is open any company that meets IEX's listing standards will be able to make a decision to list on IEX, make the requisite announcement, and obtain the fee credit once it lists on IEX. While a company that is not in existence at that time would not be able to take the actions necessary to obtain a fee credit, IEX does not believe that this issue means that the fee credit is inequitable or unfairly discriminatory. NASDAQ provides several other categories of fee incentives to companies that transfer to NASDAQ from another exchange. These include an entry fee waiver, as well as a "grandfathering" incentive related to the all-inclusive annual listing fee whereby the company's fee is based on the lower of its shares outstanding as of the date of listing or at the time of billing. For example, NASDAQ provides an accommodation to companies that applied to list on NASDAQ prior to January 1, 2015 and list after that date whereby such companies are billed based on the lower of its shares outstanding at the time of application of listing.²⁸ Thus companies that apply to list on NASDAQ after January 1, 2015 are not able to take advantage of this accommodation, including companies that did not exist prior to January 1, 2015. In its rule filing proposing this accommodation, NASDAQ asserts that it is

²⁷ See *supra* note 19, Section VI., Economic Analysis at 33842.

²⁸ See, e.g., NASDAQ IM-5910-1(b)(2) (All-Inclusive Annual Listing Fee).

consistent with the Act based on competitive considerations.²⁹ Similarly, IEX's proposed fee credit is designed to address competitive considerations (as discussed above) and is thus also consistent with the Act. Accordingly, IEX believes that the timing of availability of the fee credit to individual companies does not raise any new or novel issues not already considered by the Commission.

Finally, IEX believes that it is consistent with the protection of investors, the public interest and removing impediments to a free and open market and a national market system to provide a pro-rata refund of the annual listing fee to a company that ceases to be listed on IEX during the calendar year for which such fee was paid. In this regard, IEX further believes that if a company ceases to be listed on IEX, either because of a corporate action (e.g., merger, acquisition, going private transaction) or delisting (whether voluntary or otherwise), the company will not have received listing for the entire year and therefore should not be required to pay for the entire year. IEX notes that NYSE and NASDAQ listing fees are nonrefundable, and believes that this structure can have an anticompetitive impact on the listing market since companies may be hesitant to transfer listing mid-year, thus forgoing the benefits of a nonrefundable listing fee already paid. In contrast, IEX's proposal to provide a pro-rata refund is designed to be pro-competitive by providing listed companies with the ability to transfer listing mid-year without financial penalty.

In conclusion, the Exchange submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it is an equitable allocation of fees, does not permit unfair discrimination between

²⁹ See Securities Exchange Act Release No. 74472 (March 11, 2015), 80 FR 13925 (March 17, 2015) (SR-NASDAQ-2015-017).

customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system. For the foregoing reasons, the Exchange also believes that its simplified fee structure is consistent with the Act, 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.

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 listing fee structure is designed to provide a competitive alternative to listing on NYSE or NASDAQ. The Exchange operates in a highly competitive market in which issuers can readily favor competing listing exchanges if fee schedules and services at such other exchanges are viewed as more favorable. As a new listing exchange, IEX expects to face intense competition from NYSE and NASDAQ. 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 among issuers or with competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also notes that other listing venues are similarly free to set their fees.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different issuers will be eligible for different fee credits, these different fee credits are not based on the type of listed company but on the timing of listing on IEX and, when a higher credit is provided, on the listing fees already paid to its prior listing exchange. As discussed in the Statutory Basis section, limiting fee credits to companies that issue the required press release prior to or within 120 calendar days of the first IEX listing is designed to incentivize companies to transfer to IEX expeditiously in order to gain critical mass quickly. Further, providing a higher fee credit to companies that paid nonrefundable listing fees of more than \$250,000 to another listing exchange during the calendar year in which it lists on IEX is designed to provide a meaningful incentive to such companies to transfer their listing to IEX. All similarly situated issuers would be treated similarly since the higher credit would be based on the amount of the listing fee paid.

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,³⁰ 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

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.³¹

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.

³¹ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 -); File No. SR-IEX-2017-30)

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

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 amend Rule 14.601, which is currently reserved, to (i) adopt an annual fee of \$50,000 for companies listing on the Exchange and (ii) provide for specified fee credits.

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

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.

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

On June 17, 2016, the Commission granted IEX's application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.⁶ The Exchange plans to begin a listing program in 2017 and is proposing to adopt a simple fee structure for listed companies.⁷ Specifically, the Exchange proposes to amend Rule 14.601 to (i) adopt an all-inclusive annual fee of \$50,000 for companies listing on the Exchange and (ii) provide for specified fee credits for a company that is approved for IEX listing⁸ and, prior to or within 120 calendar days of the first IEX listing, announces

⁶ See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

⁷ The Exchange's listing program launch is pending Commission rulemaking to amend Rule 146 under Section 18 of the Securities Act of 1933 ("Securities Act") to designate securities listed on the Exchange as covered securities for purposes of Section 18(b) of the Securities Act. See Securities Act Release No. 10390 (July 14, 2017) 82 FR 33839 (July 21, 2017) (File No. S7-06-17) proposing such rule amendment.

⁸ See IEX Rule 14.202

its intent to transfer its listing to IEX in the company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act⁹ announcing its intent to withdraw its securities from listing on its current national securities exchange.

As proposed, paragraph (a) of Rule 14.601 contains introductory text stating that the rule sets forth the required listing fees. Paragraph (b) specifies a \$50,000 all-inclusive annual listing fee that will be payable annually by each listed company on January 1st of each year for the upcoming calendar year, subject to fee credits as specified in paragraph (c) and described more fully below. The annual listing fee will not be charged in the first calendar year of a company's listing on IEX, but thereafter would be the only fee payable by a listed company per year for all aspects of its listing. The Exchange is not proposing to charge application fees, entry fees, fees for the listing of additional shares, recordkeeping fees, substitution listing fees, fees for a written interpretation of listing rules or hearing fees. All listed companies will be subject to the same annual listing fee, without differentiation based on the number of shares outstanding, unless eligible for a fee credit as described below. Paragraph (b) also provides that the annual fee will be subject to a pro-rata refund if the company ceases to be listed on IEX during the calendar year for which such fee was paid. Paragraph (d) specifies that the Exchange is not proposing to charge any other listing fees.

The Exchange proposes to provide a fee credit to any company that is approved

⁹ Rule 12d2-2(c) under the Act specifies, among other things, the requirements applicable to an issuer of a class of securities listed on a national securities exchange to notify the Commission of its withdrawal of such securities from listing on such national securities exchange. Subparagraph 2(ii) thereto requires that the issuer must provide notice to its national securities exchange of such determination no fewer than 10 days before notification to the Commission. Subparagraph 2(iii) thereto requires that "[c]ontemporaneous with providing written notice to the exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site."

for IEX listing and prior to or within 120 calendar days of the first IEX listing, announces its intent to transfer its listing to IEX in the company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act¹⁰ announcing its intent to withdraw its securities from listing on its current national securities exchange. The credit will also apply to the first IEX listing if such listing is a transfer from another national securities exchange. The Exchange will provide notice of the first listing to the issuer community on the day when the first listing occurs. The fee credit will be the greater of \$250,000 or the amount of any nonrefundable listing fees actually paid by the company to another listing exchange during the calendar year in which it lists on IEX if the company is no longer listed on such other exchange upon listing on IEX. The fee credit may only be used to offset the IEX all-inclusive listing fee.¹¹

Notwithstanding the fee credit, IEX will have sufficient resources available for its listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected. Specifically, as described in the Commission's order approving IEX's exchange application, the Exchange and IEX Group, Inc. (its parent) have entered into an agreement that requires IEX Group, Inc. to provide adequate funding for the Exchange's operations, including regulation of the Exchange.¹²

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹³ of the Act in general, and furthers the objectives of Sections 6(b)(4)¹⁴ of the Act, in particular, in that it is designed to provide for the equitable allocation of

¹⁰ Id.

¹¹ See proposed Rule 14.601(b).

¹² See supra note 6.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. Additionally, IEX believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5)¹⁵ of the Act, in particular, in that they are 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, IEX is a new entrant in the exchange listing market and expects to face intense competition from the New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market (“NASDAQ”), which, IEX believes, essentially operate as a duopoly in the U.S. listing market with the vast majority of operating companies listed on U.S. securities exchanges listed on those two. As discussed more fully below, IEX’s proposed simple low cost flat-fee structure, combined with the limited fee credit, as well as no fee in the first year of listing, is designed to address the significant competitive challenges. Moreover, in view of the competition among listing exchanges, whereby companies can easily choose not to list on IEX, the fees that IEX can charge listed companies are constrained by the fees charged by its competitors and IEX cannot charge fees in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

As described more fully below, IEX’s proposed listing fees and credits are available to all listed companies in a consistent and transparent manner, treating similarly situated companies similarly. IEX has chosen to structure its listing fees differently than NYSE and NASDAQ, which are generally based on shares outstanding. This structure

¹⁵ 15 U.S.C. 78f(b)(5).

has existed for many years, and has been justified on the basis that companies with fewer shares outstanding tend to be smaller companies, which may use fewer of the listing exchange's services and be more willing to forgo an exchange listing if it costs more.¹⁶ However, the Exchange does not believe that the number of shares outstanding of a particular company necessarily corresponds to the size of the company. To the contrary, there are a variety of examples that demonstrate that shares outstanding does not correlate to larger market capitalization. This fee structure thus results in similarly situated companies being charged materially different listing fees. For example, Conagra Brands, Inc. (symbol: CAG), Fleetcor Technologies Inc. (symbol: FLT), and Autozone Inc. (symbol: AZO) each have similar market capitalizations (\$13.5 billion, \$13.1 billion, and \$14.7 billion respectively) but because of differences in shares outstanding, we estimate that CAG paid an annual listing fee in 2017 to NYSE of \$436,438 per year while FLT paid \$96,473 and AZO paid \$59,500. Similarly, NVIDIA Corp (symbol: NVDA) and The Priceline Group Inc. (symbol: PCLN) each have similar market capitalizations (\$99 billion and \$87.8 billion respectively) but because of differences in shares outstanding, we estimate that NVDA paid an annual listing fee in 2017 to NASDAQ of \$155,000 while PCLN paid \$55,000. And we estimate that Biocryst Pharmaceuticals Inc. (symbol: BCRX), with a market capitalization of only \$397.3 million, paid a \$100,000 annual listing fee to NASDAQ in 2017, almost double the PCLN fee notwithstanding that PCLN's market capitalization is approximately 221 times greater (\$87.4 billion greater)

¹⁶ See Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-087).

than BCRX's market capitalization.¹⁷

In addition, a company that has made the decision to effect a forward stock split will, under the existing exchange pricing structure, be charged double their previous listing fee (subject to any relevant maximum fees as discussed below) despite the fact that the company has not changed in structure or market capitalization.

IEX also does not believe that smaller companies use fewer listing exchange services. To the contrary, the Exchange believes that larger companies generally use fewer regulatory services than smaller companies since they tend to be more consistently above the continued listing requirements, and also tend to utilize more sophisticated advisors for interactions with the listing exchange. Thus, the Exchange believes that its simple listing fee and credit structure is a more reasonable and equitable approach, as described below.

The Exchange believes that \$50,000 per year for the all-inclusive annual listing fee is fair and reasonable based on IEX's anticipated costs to support and maintain a listing business, including its listing compliance program. IEX also notes that the proposed fee is less than all NYSE fees, within the range of NASDAQ fees, and materially less than the maximum annual fees charged by each of NYSE and NASDAQ. Currently, annual listing fees for NYSE range from \$59,500 to \$500,000,¹⁸ while annual listing fees for NASDAQ range from \$32,000 to \$155,000,¹⁹ each depending on the

¹⁷ Market capitalization estimates are based on Bloomberg data as of August 28, 2017. NYSE and NASDAQ listing fee estimates are based on listing fees reflected in Section 902 of the NYSE Listed Company Manual and the NASDAQ Rule 5900 Series (as applicable) and assumes (for NASDAQ) that each company paid the all-inclusive annual listing fee. Listing fee estimates are based on shares outstanding as reflected in Bloomberg data as of August 28, 2017.

¹⁸ See Sections 902.02 and 902.03 of the NYSE Listed Company Manual.

¹⁹ See NASDAQ Rule 5920(c) for NASDAQ Capital Market annual fees, Rule 5910(c) for NASDAQ Global and Global Select annual fees, and IM-5910-1 for the all inclusive annual

company's total shares outstanding. The all-inclusive annual listing fees applicable to companies listed on the NASDAQ Global Select Market range from \$45,000 - \$155,000.²⁰ IEX notes that its listing standards are substantially similar to the listing standards for NASDAQ Global Select market and therefore believes that it is most relevant to compare the IEX proposed all-inclusive annual listing fee to the NASDAQ Global Select Market all-inclusive annual listing fee range.

IEX also believes that it is reasonable to structure its fee as an all-inclusive fee. NASDAQ has begun to structure its annual listing fees as an all-inclusive fee, noting that such a fee structure simplifies billing and provides transparency and certainty to companies as to the annual cost of listing.²¹ IEX also believes that such considerations warrant use of an all-inclusive fee.

IEX further believes that it is reasonable to provide a fee credit under the terms described in the Purpose section. Transferring a listing to a new exchange is a significant decision for a public company, and the Exchange anticipates that NYSE and NASDAQ will each actively seek to retain listed companies considering transferring their listing to IEX. Accordingly, the Exchange believes that although listing on IEX will provide certain benefits to issuers compared to listing on NYSE and NASDAQ – such as its investor and issuer focused model – the Exchange also believes that meaningful fee credits are initially necessary to establish its listing program quickly.

As the Commission has explicitly acknowledged, the current listing market is highly concentrated, noting that, “[e]ntrant exchanges can... face barriers to entry related

listing fees applicable to companies listed on the NASDAQ Global Market (including the Global Select Market).

²⁰ *Id.*

²¹ *See, e.g.*, Securities Exchange Act Release No. 78149 (June 24, 2016), 81 FR 42388 (June 29, 2016) (SR-NASDAQ-2016-085).

to reputation. Exchanges that enter the market may not be able to quickly establish a strong reputation for high quality listings, which may adversely affect their ability to compete with incumbent exchanges. This lack of reputation may discourage both investors and issuers from transacting or listing on an entrant exchange, which may reinforce an entrant exchange's lack of reputation."²²

As proposed, IEX's fee credit is designed to address these significant competitive challenges, and quickly establish a strong reputation for high quality listings. Based on discussions with companies currently listed on NYSE and NASDAQ, the Exchange believes that a meaningful fee credit is necessary to incentivize currently listed companies to transfer their listing to IEX. In this regard, companies generally view a listing transfer as a long-term commitment and therefore the financial incentive should align with such long-term commitment. IEX further believes, based on these discussions, that in order to be meaningful the fee credit must accomplish two objectives: provide at least five years of free listing and cover the listing fees already paid by the company in the year of listing on IEX.²³ In order to address both objectives, the fee credit will be for a minimum of \$250,000 (to cover five years of listing fees) or the greater of the amount of any nonrefundable listing fee actually paid by the company to another listing exchange during the calendar year in which it lists on IEX if the company is no longer listed on such other exchange upon listing on IEX.

Further, the Exchange believes that it is reasonable, and consistent with an

²² See Securities Act Release No. 10390 (July 14, 2017), 82 FR 33839 (July 21, 2017) (File No. S7-06-17).

²³ In the event that the Exchange proposes increases to its listing fees, such increases will include a grandfathering provision for companies that have remaining credits available so that each such company obtains the contemplated years of free listing as proposed herein, subject to Commission filing and effectiveness.

equitable allocation of listing fees to provide a larger fee credit to companies that have already paid comparatively larger listing fees to NYSE or NASDAQ, which for some NYSE companies is as high as \$500,000.²⁴ In this regard, the Exchange believes that an NYSE or NASDAQ listed company that has paid such larger listing fees may require a corresponding credit in order to incentivize the company to transfer its listing to IEX. Accordingly, the Exchange believes that providing an enhanced credit is not an inequitable allocation of fees because it merely operates to address the potential disincentive to list that may exist for a company that has paid listing fees higher than \$250,000. All similarly situated companies will receive the same credit.

The Exchange notes that there is precedent to provide a listing fee credit based on the amount of listing fees paid to another exchange. For example, NASDAQ Rules provide that NASDAQ waives a portion of its annual fee in the case of securities that transfer to NASDAQ, by providing such companies with a credit in the pro-rated amount of any annual listing fee paid to its prior listing exchange for the period of time after the transfer, which is used to offset NASDAQ listing fees for the first year of listing.²⁵ In its rule filing adopting this credit,²⁶ NASDAQ (then a subsidiary of the National Association of Securities Dealers, Inc.), noted that the credit would remove impediments to and perfect the mechanism of a free and open market and a national market system by removing an impediment to issuers transferring from another market to NASDAQ. Similarly, IEX's proposed enhanced listing fee credit for a company that paid more than \$250,000 in listing fees in the year of its transfer to IEX is designed to incentivize such

²⁴ See Section 902 of the NYSE Listed Company Manual.

²⁵ See NASDAQ IM-5900-4 (Waiver of Certain Annual Listing Fees Upon Transfer of a Non-Nasdaq Exchange Listed Security).

²⁶ See Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR-NASD-2006-047).

companies to transfer to IEX by providing a credit for listing fees actually paid to another exchange in the year of transfer, thereby removing a potential impediment to such transfers. Further, the Exchange notes that NYSE and Nasdaq each offer incentives to certain listed companies that transfer from the other market in the form of specified products and services that are valued as high as \$757,500 for a transfer from NYSE to Nasdaq and \$263,000 for a transfer from Nasdaq to NYSE.²⁷ Similarly, the IEX's proposed credit is designed to incentivize companies listed on other markets to transfer their listing to IEX. Thus, IEX believes that the monetary value of its proposed fee credit transfer incentives is comparable to the monetary value of the transfer incentives offered by NYSE and NASDAQ.

Moreover, as discussed above, both NYSE and NASDAQ charge listing fees predominantly based on the number of shares outstanding, such that a company with fewer shares outstanding is generally charged a lower listing fee than a company with a larger number of shares outstanding. By providing a higher credit to a company that has paid listing fees in excess of \$250,000 to NYSE, the IEX credit is designed to take into account the fact that some issuers have been subject to higher fees based on their number of shares outstanding, and to provide issuers a credit incentive on that basis.

²⁷ See Section 907.00 of the NYSE Listed Company Manual and Nasdaq Rule IM-5900-7. The Exchange notes that the transfer incentive values are provided over multiple years. Further, the value of the Nasdaq incentives noted are for listed companies with a market capitalization of \$5 billion that transfer from NYSE to the Nasdaq Global Market or Global Select Market. Listed companies that transfer from NYSE to the Nasdaq Global Market or Global Select Market with market capitalization of up to \$750 million and between \$750 million or more but less than \$5 million receive incentives over multiple years in the form of specified products and services valued at an aggregate of \$144,500 and \$553,500 respectively. The value of the NYSE incentives noted are for listed companies with a global market value of \$400 million or more that transfer from another national securities exchange to NYSE. Listed companies with a global market value of less than \$400 million receive incentives over 24 calendar months in the form of specified products and services valued at \$153,000.

The Exchange believes that limiting the fee credit to companies that announce their intent to transfer listing to IEX prior to or within 120 calendar days of the first IEX listing, as described in the Purpose Section, will operate as an incentive to companies listed on NYSE or NASDAQ to transfer their listing to IEX expeditiously in order to enable the Exchange to achieve critical mass relatively quickly, in a highly competitive environment. As described in the Purpose Section, the Exchange will provide notice to the issuer community on the day when the first listing occurs, and IEX believes that the 120 calendar day period will provide ample time for any company that meets IEX's listing requirements to successfully complete the clearance²⁸ and application processes,²⁹ issue the required press release within 120 calendar days of the first IEX listing, and thus receive the fee credit. As the Commission has noted, and as discussed above, if a new listing exchange does not quickly establish a strong reputation for high quality listings, it may adversely affect its ability to compete with incumbent exchanges.³⁰ Structuring the availability of the fee credit within the specified time window is designed to address the imperative to quickly establish a strong reputation for high quality listings.

The Exchange believes that this structure is reasonable, not an inequitable allocation of fees, and not unfairly discriminatory since while the time window is open any company that meets IEX's listing standards will be able to make a decision to list on IEX, make the requisite announcement, and obtain the fee credit once it lists on IEX. While a company that is not in existence at that time would not be able to take the actions necessary to obtain a fee credit, IEX does not believe that this issue means that the fee

²⁸ See IEX Rule 14.201.

²⁹ See IEX Rule 14.202.

³⁰ See *supra* note 22, Section VI., Economic Analysis at 33842.

credit is inequitable or unfairly discriminatory. NASDAQ provides several other categories of fee incentives to companies that transfer to NASDAQ from another exchange. These include an entry fee waiver, as well as a “grandfathering” incentive related to the all-inclusive annual listing fee whereby the company’s fee is based on the lower of its shares outstanding as of the date of listing or at the time of billing. For example, NASDAQ provides an accommodation to companies that applied to list on NASDAQ prior to January 1, 2015 and list after that date whereby such companies are billed based on the lower of its shares outstanding at the time of application of listing.³¹ Thus companies that apply to list on NASDAQ after January 1, 2015 are not able to take advantage of this accommodation, including companies that did not exist prior to January 1, 2015. In its rule filing proposing this accommodation, NASDAQ asserts that it is consistent with the Act based on competitive considerations.³² Similarly, IEX’s proposed fee credit is designed to address competitive considerations (as discussed above) and is thus also consistent with the Act. Accordingly, IEX believes that the timing of availability of the fee credit to individual companies does not raise any new or novel issues not already considered by the Commission.

Finally, IEX believes that it is consistent with the protection of investors, the public interest and removing impediments to a free and open market and a national market system to provide a pro-rata refund of the annual listing fee to a company that ceases to be listed on IEX during the calendar year for which such fee was paid. In this regard, IEX further believes that if a company ceases to be listed on IEX, either because

³¹ See, e.g., NASDAQ IM-5910-1(b)(2) (All-Inclusive Annual Listing Fee).

³² See Securities Exchange Act Release No. 74472 (March 11, 2015), 80 FR 13925 (March 17, 2015) (SR-NASDAQ-2015-017).

of a corporate action (e.g., merger, acquisition, going private transaction) or delisting (whether voluntary or otherwise), the company will not have received listing for the entire year and therefore should not be required to pay for the entire year. IEX notes that NYSE and NASDAQ listing fees are nonrefundable, and believes that this structure can have an anticompetitive impact on the listing market since companies may be hesitant to transfer listing mid-year, thus forgoing the benefits of a nonrefundable listing fee already paid. In contrast, IEX's proposal to provide a pro-rata refund is designed to be pro-competitive by providing listed companies with the ability to transfer listing mid-year without financial penalty.

In conclusion, the Exchange submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it is an equitable allocation of fees, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system. For the foregoing reasons, the Exchange also believes that its simplified fee structure is consistent with the Act, 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.

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 listing fee structure is designed to provide a competitive alternative to listing on NYSE or NASDAQ. The Exchange operates in a highly competitive market in which issuers can readily favor competing listing exchanges if fee schedules and services at such other exchanges are viewed as more favorable. As a new listing exchange, IEX expects to face intense competition from NYSE and NASDAQ. 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 among issuers or with competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also notes that other listing venues are similarly free to set their fees.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different issuers will be eligible for different fee credits, these different fee credits are not based on the type of listed company but on the timing of listing on IEX and, when a higher credit is provided, on the listing fees already paid to its prior listing exchange. As discussed in the Statutory Basis section, limiting fee credits to companies that issue the required press release prior to or within 120 calendar days of the first IEX listing is designed to incentivize companies to transfer to IEX expeditiously in order to gain critical mass quickly. Further, providing a higher fee credit to companies that paid nonrefundable listing fees of more than \$250,000 to another listing exchange during the calendar year in which it lists on IEX is designed to provide a

meaningful incentive to such companies to transfer their listing to IEX. All similarly situated issuers would be treated similarly since the higher credit would be based on the amount of the listing fee paid.

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)³³ 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)³⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁴ 15 U.S.C. 78s(b)(2)(B).

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2017-30 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-2017-30. 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-2017-30 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.³⁵

³⁵ 17 CFR 200.30-3(a)(12).

Exhibit 5 – Text of Proposed Rule Change

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

Rule 14.600 Listed Company Fees

Rule 14.601 [Reserved]

(a) This rule sets forth the required fees for IEX Companies.

(b) Annual Fee. Each IEX Company shall pay to IEX a \$50,000 all-inclusive annual fee. The fee will be assessed on January 1st for the upcoming calendar year, subject to a pro-rata refund if the IEX Company ceases to be listed on IEX during the calendar year for which such fee was paid. No annual fee will be assessed in the first calendar year of listing.

(c) Credits. An IEX Company that prior to or within 120 calendar days of the first IEX listing, announces its intent to transfer its listing to IEX in the Company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act announcing its intent to withdraw its securities from listing on its current national securities exchange will receive a credit against the annual listing fee specified in paragraph (b) of this IEX Rule. The credit will also apply to the first IEX listing if such listing is a transfer from another national securities exchange. The credit will be the greater of \$250,000 or the amount of any nonrefundable listing fees actually paid by the IEX Company to another listing exchange during the calendar year in which it lists on IEX if the IEX Company is no longer listed on such other exchange upon listing on IEX. The credit will be applied annually against IEX listed company fees until exhausted, for such time as the IEX Company is continuously listed on IEX.

(d) Other Fees. An IEX Company is not subject to any other listing fees.
