

initial capital expenditures. Further, a vast majority of the Exchange's Members, if not all, benefited from these lower fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues and extending the duration during which it would recoup its initial capital expenditures. The SIG Letter chooses to ignore this reality and instead criticize the Exchange for initially charging lower fees or providing a moratorium on certain non-transaction fees to the benefit of all market participants. The Exchange is now trying to amend its fee structure to enable it to continue to maintain and improve its overall market and systems while also providing a highly reliable and deterministic trading system to the marketplace.

### 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) of the Act,<sup>99</sup> and Rule 19b-4(f)(2)<sup>100</sup> thereunder. 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 to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2021-54 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-PEARL-2021-54. 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 (<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 Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2021-54 and should be submitted on or before December 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>101</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-25019 Filed 11-16-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93557; File No. SR-IEX-2021-14]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees

November 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 1, 2021, 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 Exchange. 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,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> the Exchange is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to assess fees for receipt and distribution of its proprietary market data feeds. IEX will implement the proposed fee beginning on January 3, 2022, to provide an opportunity for subscribers to update their data subscriptions to suit their particular market data needs.

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://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 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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>99</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>100</sup> 17 CFR 240.19b-4(f)(2).

<sup>101</sup> 17 CFR 200.30-3(a)(12).

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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

IEX is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to assess fees for receipt and distribution of its proprietary market data feeds.

IEX has not previously imposed any fees to access its real-time top of book ("TOPS"<sup>5</sup>) and depth of book ("DEEP"<sup>6</sup>) proprietary market data feeds ("IEX Data"),<sup>7</sup> either by direct recipients or through redistribution. In general, IEX believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. IEX believes this high standard is especially important when an exchange imposes fees for its own market data, because it believes each exchange has a natural monopoly over its own market data (specifically depth of book and direct access to top of book). Therefore, IEX believes that each exchange should demonstrate that these fees bear a reasonable relationship to its costs and reasonable business needs and that it is not taking unfair advantage of its unique position as the sole provider of its own proprietary market data.

In proposing to charge fees for access to IEX Data, IEX has sought to determine such fees in a transparent way in relation to its own aggregate costs of providing the related service, and also carefully and transparently assess the impact on Data Subscribers<sup>8</sup>—both generally and in relation to other Data Subscribers, *i.e.*, to assure the fee will not create an undue financial burden on any participant and will not have an undue impact in particular on smaller

Data Subscribers and competition among Data Subscribers in general.

IEX believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,<sup>9</sup> and Rule 19b-4 thereunder,<sup>10</sup> with respect to the types of information self-regulatory organizations ("SROs") should provide in seeking approval of any fee changes, and Section 6(b) of the Act,<sup>11</sup> which requires, among other things, that exchange fees be reasonable and equitably allocated,<sup>12</sup> not designed to permit unfair discrimination,<sup>13</sup> and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>14</sup> This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.<sup>15</sup>

As noted above, IEX offers two real-time proprietary market data feeds: TOPS and DEEP. TOPS is an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book<sup>16</sup> and last sale information for executions on the Exchange.<sup>17</sup> The data available in TOPS is also available through the securities information processor ("SIP") feeds. DEEP is an uncompressed data feed that provides aggregated depth of book quotations for all displayed orders resting on the Order Book at each price level and last sale information for executions on the Exchange.<sup>18</sup> DEEP includes all resting displayed liquidity on the Exchange, aggregated by price level, meaning it includes the top of book quotes contained in TOPS, and also contains any less aggressively priced displayed quotes. The content of both TOPS and DEEP is derived exclusively from orders

that are sent by the Exchange's Members,<sup>19</sup> which the Exchange formats and rebroadcasts to market participants and to data vendors.

IEX currently does not charge fees for access to IEX Data, irrespective of whether the Data Subscriber is a Member or not, the manner in which the data is received or used, the number of users, how quickly the recipient is able to receive the data after it is made available by the System,<sup>20</sup> or whether the data is subject to any delay through the redistribution process. The objective of this approach was to eliminate any fee-based barriers to access IEX Data when IEX launched as a national securities exchange in 2016, and it was successful in achieving this objective in that a large number of both Members and non-Members currently receive either TOPS, DEEP, or both. As discussed more fully below, IEX recently calculated its annual aggregate costs for providing IEX Data to its Data Subscribers at approximately \$2.5 million. Because IEX has to date offered IEX Data free of charge, IEX has borne 100% of all costs for the compilation and dissemination of IEX Data to IEX's Data Subscribers.

In order to establish fees that are intended to recover the aggregate costs of providing IEX Data to its Data Subscribers and limit the amount of potential return in excess of those costs to a reasonable markup, the Exchange is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to charge all Data Subscribers fees to access IEX Data in real time. In addition, Data Subscribers that redistribute IEX Data in real time to an external, non-affiliated<sup>21</sup> third party would be subject to redistribution fees. However, Data Subscribers that redistribute IEX Data subject to a delay of at least fifteen milliseconds ("Delayed IEX Data")<sup>22</sup> will not be subject to a fee for such redistribution, and the recipients of Delayed IEX Data ("Delayed IEX Data Recipient") will not be considered to be

<sup>9</sup> 15 U.S.C. 78s(b)(1).

<sup>10</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

<sup>15</sup> In May 2019, the Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act ("Guidance"). While IEX understands that the Guidance does not create new legal obligations on SROs, the Guidance is consistent with IEX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

<sup>16</sup> See IEX Rule 1.160(p).

<sup>17</sup> See IEX Rule 11.330(a)(1).

<sup>18</sup> See IEX Rule 11.330(a)(3).

<sup>19</sup> See IEX Rule 1.160(s).

<sup>20</sup> See IEX Rule 1.160(nn).

<sup>21</sup> The Data Subscriber Agreement defines affiliate as "any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party." A non-affiliated third-party is any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that is not an affiliate of the Data Subscriber pursuant to such definition.

<sup>22</sup> IEX only provides real-time IEX Data and will not itself delay the dissemination of IEX Data to Data Subscribers.

<sup>5</sup> See IEX Rule 11.330(a)(1).

<sup>6</sup> See IEX Rule 11.330(a)(3).

<sup>7</sup> As discussed below, both TOPS and DEEP also include last sale information.

<sup>8</sup> "Data Subscriber" refers to any natural person or entity, that receives real-time market data either directly from IEX or from another Data Subscriber. IEX notes that the current recipients of IEX Data include many Members of the Exchange, *see* IEX Rule 1.160(s), but also include several non-Members, including vendors who redistribute IEX Data to third-party recipients.

Data Subscribers.<sup>23</sup> Neither approach will differentiate between redistribution to Data Subscribers that receive IEX Data in displayed versus non-displayed format, whether in real time or delayed.

Specifically, IEX proposes to charge the following flat fees to any Data Subscriber: \$500 per month for real-time access to the TOPS feed; \$2,500 per month for real-time access to the DEEP feed; and \$500 per month to redistribute either the TOPS or DEEP feed (or both TOPS and DEEP) in real time. As noted above, IEX is proposing that redistribution of TOPS or DEEP after [sic] at least a fifteen-millisecond delay will be free. Data Subscribers may therefore redistribute IEX Data to any Delayed IEX Data Recipient without paying any distribution fees to IEX, and without requiring the Delayed IEX Data Recipient to become a Data Subscriber.<sup>24</sup> And IEX is also not proposing to charge a distribution fee to a Delayed IEX Data Recipient that further redistributes Delayed IEX Data.

IEX's proposed market data fees are based on a cost-plus model. In determining the appropriate fees to charge, IEX considered its costs of providing market data, using what it believes to be a conservative methodology (*i.e.*, that strictly considers only those costs that are most clearly directly related to the production and distribution of IEX Data) to estimate such costs,<sup>25</sup> as well as the relative costs of compiling the TOPS and DEEP feeds,<sup>26</sup> and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in IEX recouping less than all of its costs of providing market

data because of the uncertainty of forecasting Data Subscriber decision-making with respect to their IEX market data subscriptions.

Applying this pricing model, IEX is proposing to charge \$500 per month for real-time receipt of TOPS and \$2,500 per month for real-time receipt of DEEP. IEX believes that it is reasonable and appropriate to charge a higher fee for DEEP because it contains significantly more market data than TOPS and costs more for IEX to compile.<sup>27</sup> Additionally, IEX's proposed fee structure for TOPS and DEEP is designed to make real time access to IEX's top of book widely available to a broad base of market participants. In order to accomplish this goal, IEX proposes to allocate its cost plus structure so that TOPS is materially more affordable than DEEP. IEX also notes, as described in footnote 23 [sic], *supra*, that because it contains multiple price levels, DEEP requires more processing (and related costs) for IEX to generate than TOPS.

IEX is also proposing to charge a \$500 per month redistribution fee to Data Subscribers that choose to redistribute IEX market data in real time to an external, non-affiliate third party. Enabling redistribution in real time adds to IEX's administrative expenses related to the need to identify and track the recipients of IEX Data. In addition, IEX notes that if it allowed Data Subscribers to redistribute IEX Data in real time without any additional fees, it could enable Data Subscribers to circumvent IEX's fees for providing IEX Data, which would conflict with IEX's objective to recover its costs of producing IEX Data.

Finally, IEX is charging only for data that is made available in real time, because it is the very demand for real-time, low latency data that drives much of the costs associated with creating and distributing IEX Data. For example, IEX must invest more in the resiliency, capacity, and redundancy of its proprietary market data feeds to provide real-time, low latency access to IEX Data. Moreover, not charging IEX fees for Delayed IEX Data is also consistent with IEX's desire to make its data broadly available to a range of market participants including long-term investors.

As discussed below, this total maximum cost of \$3,500 per month for a Data Subscriber to receive all IEX Data and be permitted to redistribute it in real time, reflects an amount that at most would lead to a reasonable markup over IEX's costs of providing IEX Data, and may even result in only a partial recoupment of IEX's costs.

<sup>27</sup> See *supra* note 26.

In January 2019, IEX conducted a study of its aggregate costs to produce market data and connectivity (the "Cost Study").<sup>28</sup> The Cost Study includes a detailed analysis of IEX's aggregate baseline costs, including the methodology it used for determining such costs for three separate segments—market data, physical connectivity (the physical connections required to access IEX in its data center), and logical connectivity, which concerns the cost to offer and maintain Order Entry Ports. The Cost Study estimated IEX's aggregate annual cost to offer IEX Data to its Data Subscribers to be approximately \$1.8 million per year, as reflected in Table 1.<sup>29</sup>

TABLE 1

Annual IEX Market Data Infrastructure	(2019) (\$1,791,403)
Top of Book Servers (TOPS) (5) .....	(\$12,833)
Depth of Book Servers (DEEP) (5) ....	(12,833)
Market Data Feeds Switches .....	
(2 x 24 port) .....	(13,333)
ITF Market Data .....	(7,333)
Data Center Space, Power, Security ..	(10,605)
Administrative Access .....	(33,333)
Monitoring .....	(596,135)
Personnel .....	(1,104,998)
Total Annual Costs .....	(1,791,403)

IEX recently updated and refreshed the cost estimates contained in the Cost Study. As further detailed below, this update reflects somewhat lower annual hardware costs related to market data than contained in the 2019 Study, and somewhat higher personnel costs. Considering all factors together, the updated estimates reflect an increase in total annual costs to produce market data from \$1,791,403 to \$2,483,644.

Table 2, below, details the individual annual line-item costs considered by IEX to be directly related to offering IEX Data to Data Subscribers.<sup>30</sup> The chart shows three cost components: (1) Direct costs, such as servers, infrastructure, and monitoring; (2) enhancement initiative costs (*e.g.*, new functionality for IEX Data and increased capacity for the proprietary market data feeds, as described below);<sup>31</sup> and (3) personnel

<sup>28</sup> See "The Cost of Exchange Services—Disclosing the Cost of Offering Market Data and Connectivity as a National Securities Exchange" (January 2019) available at <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>.

<sup>29</sup> See Cost Study at 15–18 for details on how IEX estimated the costs of its market data infrastructure; see also *supra* note 25.

<sup>30</sup> Table 2 also shows the breakdown of the 2019 estimated market data infrastructure costs.

<sup>31</sup> These enhancement initiative costs are a routine part of offering proprietary market data. Some of the enhancement costs in Table 2, such as the introduction of the snapshot functionality for TOPS and DEEP, are one-time costs, but each year

<sup>23</sup> Data Subscribers, whether they receive IEX Data directly from the Exchange or from another Data Subscriber, will be required to enter into a Data Subscriber Agreement with IEX, which will be made available on IEX's website. Delayed IEX Data Recipients will *not* be required to enter into a Data Subscriber Agreement with IEX.

<sup>24</sup> The Delayed IEX Data Recipient may be subject to any fees charged by the redistributor of the Delayed IEX Data, based upon the contractual arrangement between the Delayed IEX Data Recipient and the provider of Delayed IEX Data. Such fees would not be paid to the Exchange.

<sup>25</sup> For example, IEX only included the costs associated with physical assets that are directly responsible for producing and transmitting IEX Data, and excluded from its market data cost calculations any physical connectivity assets that are used to provide both order entry and market data. See Cost Study at 16. Thus, IEX notes that this methodology underestimates the total costs of providing market data.

<sup>26</sup> DEEP is an aggregated feed that must perform additional logic on each order-related message received from the System to calculate the total number of displayed shares available at each price level. TOPS requires less processing than DEEP because it only aggregates displayed liquidity at a single price level, the top of book.

costs. The servers included were limited to those specifically dedicated to IEX Data. "Monitoring" includes hardware and software licenses used to monitor these servers and the health of the market data products provided by such assets. All physical assets and software,

which also includes assets used for testing and monitoring of market data infrastructure, were valued at cost, and depreciated over three years. For personnel costs, IEX calculated an allocation of employee time for employees whose functions include

providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data,<sup>32</sup> and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401(k) matching contributions.<sup>33</sup>

TABLE 2

Annual IEX Market Data Infrastructure	2019 (\$1,791,403)	2021 (\$2,483,644)
<i>Direct Costs:</i>		
Servers .....	(\$32,999)	(\$26,696)
Network Infrastructure & Admin Access .....	(46,666)	(152,783)
Monitoring .....	(596,135)	(213,109)
Data Center (Space, Power, Security) .....	(10,605)	(79,142)
<i>Enhancement Initiatives Costs:</i>		
DEEP Snapshot .....	N/A	(95,974)
TOPS Snapshot .....	N/A	(95,974)
Capacity Planning .....	N/A	(232,856)
Monitoring Tools .....	N/A	(49,609)
<i>Ongoing Personnel Costs</i> .....	(1,104,998)	(1,537,500)
<b>Total Annual Costs</b> .....	<b>(1,791,403)</b>	<b>(2,483,644)</b>

As noted in Table 2, IEX continues to introduce enhancement initiatives to IEX Data. First, effective February 3, 2021, IEX launched "DEEP Snapshot", which allows Data Subscribers to download point-in-time snapshots of DEEP in order to enable Data Subscribers to accelerate late start recovery.<sup>34</sup> Second, effective September 27, 2021, IEX launched "TOPS Snapshot", which allows Data Subscribers to download point-in-time snapshots of TOPS in order to enable them to accelerate late-start recovery. Third, IEX is in the process of expanding the capacity and monitoring tools that support the efficient transmission of IEX Data to the IEX's proprietary market data feeds.

IEX also notes that it has made recent changes to its system functionality and architecture which improve the content and speed of IEX's proprietary market data feeds, but that have no impact on IEX's estimated costs of providing IEX

Data. For example, effective February 16, 2021, IEX removed its outbound 350 microsecond latency "speedbump" while retaining its inbound 350 microsecond latency "speedbump."<sup>35</sup> Prior to that date, IEX disseminated its top of book data and last sale data to the SIPs free of any artificial delays, but all other outbound messages, including IEX Data transmitted through IEX's proprietary market data feeds, were subjected to a 350-microsecond latency.<sup>36</sup> Additionally, on April 1, 2021, IEX began to display odd lot sized orders, which are aggregated by price on DEEP, and can aggregate to form the top of book quote on TOPS.<sup>37</sup> And on October 13, 2021, IEX began disseminating a "Retail Liquidity Indicator" on both TOPS and DEEP, which tells market participants when IEX has at least one round of Retail Liquidity Provider order<sup>38</sup> interest available for a particular security, which is resting at the Midpoint Price<sup>39</sup> and

priced at least \$0.001 better than the NBB<sup>40</sup> or NBO.<sup>41</sup> The Retail Liquidity Indicator reflects the symbol and side of the resting interest, but does not include the price or size.<sup>42</sup>

IEX now proposes a fee structure designed to recoup its costs and limit any revenue in excess of cost to an amount that represents no more than what IEX believes is a reasonable rate of return over such costs.<sup>43</sup> If all of IEX's current Data Subscribers continue to receive and, as applicable, redistribute, real-time IEX Data, IEX estimates it would earn at most an approximately 95% markup over its costs (a total of \$4,878,000 annually). IEX believes that such a scenario is unlikely (as discussed more fully below), so that any return in excess of its costs is likely to be significantly lower (IEX is targeting a return of 25% over its costs).<sup>44</sup> IEX believes that this cost-plus pricing model would allow IEX to recoup its annualized costs and continuing

IEX expects to incur new enhancement costs such as the costs associated with increasing the capacity of its market data feeds and costs associated with upgrading its market data infrastructure, as well as any new functionality. Thus IEX believes that its annual enhancement costs on an ongoing basis will be similar and that the enhancement costs included in the 2021 update are not extraordinary.

<sup>32</sup> Notably, IEX did not include any costs associated with operating the Exchange itself in calculating the costs of offering IEX Data.

<sup>33</sup> Applying the methodology of the Cost Study, IEX determined cost allocation for employees who perform work in support of compiling and disseminating IEX Data to arrive at a full time equivalent ("FTE") of 6.15 FTEs across all the identified personnel (the FTE at the time of the Cost Study was 4.05). IEX then multiplied the FTE times a blended compensation rate for all relevant IEX personnel to determine the personnel costs

associated with compiling and disseminating IEX Data.

<sup>34</sup> See Trading Alert No. 2021-003, available at <https://iextrading.com/alerts/#/135>.

<sup>35</sup> See Trading Alert 2021-006, available at <https://iextrading.com/alerts/#/138>.

<sup>36</sup> See Securities Exchange Act Release No. 91016, January 29, 2021, 86 FR 8238 (February 4, 2021) (SR-IEX-2020-18).

<sup>37</sup> See Trading Alert 2021-010, available at <https://iextrading.com/alerts/#/142>; see also, See Securities Exchange Act Release No. 90933, January 15, 2021, 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

<sup>38</sup> See IEX Rule 11.190(b)(14).

<sup>39</sup> The term "Midpoint Price" means the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" means the national best bid or offer, as set

forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

<sup>40</sup> See IEX Rule 1.160(u).

<sup>41</sup> *Id.*

<sup>42</sup> See Trading Alert 2021-036, available at <https://iextrading.com/alerts/#/169>; see also, Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR-IEX-2021-06).

<sup>43</sup> IEX notes that it is not only being transparent about its costs associated with producing IEX Data, but is also being transparent about what it thinks the appropriate markup over costs should be.

<sup>44</sup> If the revenue IEX receives from the proposed fees materially deviates from IEX's projections described herein, IEX will assess whether it is appropriate to make a rule filing pursuant to Section 19(b) of the Act to increase or decrease the fees accordingly.

investments in its market data infrastructure, while introducing a straightforward pricing framework that would not be unwieldy or onerous for even the heaviest users of IEX Data, which would pay at most \$3,500 per month for access to both TOPS and DEEP and the right to redistribute IEX Data in real time.

As described in the Statutory Basis section, IEX does not believe that exchange market data fees are constrained by competitive market forces, and therefore does not believe this fee proposal should be based on a comparative analysis of IEX's proposed fees for IEX Data and the fees charged by IEX's competitors for the equivalent data. Furthermore, IEX does not have visibility into other equities exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, IEX believes the other exchange's market data fees are a useful example of alternative approaches to providing and charging for market data. To that end, IEX notes that its proposed fees are materially lower than what competing equities exchanges charge IEX for similar market data products.<sup>45</sup> Specifically, during 2021 to date, IEX paid an aggregate of \$101,024 to the 11 other equities exchanges<sup>46</sup> that charge for their market data<sup>47</sup> to obtain top of book, depth of book and last sale market data on a monthly basis. By comparison, to obtain the equivalent market data from IEX (as proposed) the aggregate monthly cost for those 11 equity exchanges would be \$3,000 per exchange family.<sup>48</sup> Thus the 11 competing exchanges would be subject to aggregate monthly fees of \$9,000 or approximately one-eleventh of the aggregate fees that IEX pays to those 11 exchanges. Additionally, as noted in the Cost Study, the actual costs IEX incurs

to obtain market data from other exchanges often involve aggregating several different kinds of fees, making it difficult to ascertain the actual costs to a market participant of obtaining equivalent market data from other exchanges.<sup>49</sup> For example, several other exchanges charge separate fees depending on whether exchange data is redistributed internally<sup>50</sup> or externally,<sup>51</sup> is used for non-display or other forms of use,<sup>52</sup> or is calculated on a per user basis, with different fees for non-professional<sup>53</sup> and professional<sup>54</sup> users of the data feeds.<sup>55</sup> By contrast, IEX's fee proposal is much simpler—charging a flat fee for any entity to access one or both of the IEX Data feeds (\$500 month for TOPS/\$2,500 for DEEP), and a flat fee of \$500 for any entity that wishes to redistribute TOPS, DEEP, or both TOPS and DEEP in real time (regardless of the number of recipients that the entity redistributes to). This simple fee structure means the cost burden for subscribing to receive IEX Data would be relatively flat regardless of the size of the Data Subscriber's firm. At the same time, IEX believes that the fees are set at a level that will not represent a significant cost to any Data Subscriber. For example, because IEX will not be charging any variable per user fees, Data Subscribers will not need to expend resources on monthly reporting of market data usage that can be required when subscribing to other exchange data feeds with pricing that differs based on the various factors noted above. Furthermore, because IEX will not be charging different usage fees (such as for “display” vs. “non-display” usage) or charging based on “controlled” and “uncontrolled” products, the Data Subscribers will not need to expend resources on managing different methods of receiving and distributing IEX Data or different types of application usage. Furthermore, IEX understands that the above administrative concerns can result in

contentious audits or even litigation between data subscribers and providers of proprietary market data, all of which can result in substantial costs to the subscribers of other exchanges' market data feeds.

IEX acknowledges that there are trade-offs between the benefits of a relatively simple fee structure and a fee structure that is more graduated based on the extent and variety of uses of IEX Data. IEX believes it has struck an appropriate balance of these interests by creating a fee model that is simple, easy to understand and administer, and set at a level that is affordable for all firms that need real-time data, while imposing no charge on recipients of Delayed IEX Data that do not need real-time data.

IEX proposes to allow Data Subscribers to provide Delayed IEX Data free of charge in order to minimize barriers to access IEX Data. IEX's business model seeks to generate revenue from trading rather than from data and connectivity fees, so an essential part of the proposed fee structure is to enable all market participants to be able to obtain IEX Data while it is still timely and useful to most of them without incurring any IEX fees.

As noted above, this fee proposal would result in IEX receiving *at most* an amount equal to approximately 95% over its estimated costs of providing market data, only if *all* current Data Subscribers and their customers (*i.e.*, recipients of redistributed IEX Data from a Data Subscriber) elect to make no changes to their current subscriptions and continue to receive IEX market data in real time.<sup>56</sup> However, IEX expects to recoup far less than that amount because market participants that do not need real-time data will have the option to receive Delayed IEX Data (at a minimal delay of only 15 milliseconds) in lieu of real-time data, without paying a fee to IEX. For example, and as described more fully below, IEX believes that Data Subscribers that are not engaged in high speed, low latency trading may not choose to pay for real-time IEX Data. As noted above, this aspect of the proposal allows Data Subscribers to provide Delayed IEX Data to market participants who do not require (or quite possibly even have the

<sup>45</sup> For examples of other exchange's market data fees, see [https://www.nyse.com/publicdocs/nyse/data/NYSE\\_Market\\_Data\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf); <https://nasdaqtrader.com/Trader.aspx?id=DPUSdata>; and [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/).

<sup>46</sup> Currently, IEX pays for market data from four NYSE exchanges (New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.), three Nasdaq exchanges (Nasdaq Stock Market LLC, Nasdaq BX, Inc., and Nasdaq PHILX LLC) and four Cboe exchanges (Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.).

<sup>47</sup> Long-Term Stock Exchange Inc.; MEMX LLC; MIAX PEARL, LLC; and NYSE Chicago, Inc. currently do not charge for their market data.

<sup>48</sup> As described below, IEX is proposing to only charge the \$500 Distribution Fee to external, non-affiliate third parties of the Data Subscriber.

<sup>49</sup> See Cost Study at 18.

<sup>50</sup> Internal distribution is receiving market data from an exchange and distributing it within the same entity that received the data.

<sup>51</sup> External distribution is receiving market data from an exchange and distributing it to a third party outside of the entity that received the data.

<sup>52</sup> Non-display usage means any method of accessing a market data product that involves access or use by a machine or automated device without access or use of a display by a natural person.

<sup>53</sup> Non-professional users are natural persons who use data for personal, not commercial, purposes, and are not a registered financial services professional.

<sup>54</sup> Anyone who is not a non-professional user is considered a professional user.

<sup>55</sup> See *supra* note 45.

<sup>56</sup> IEX notes that the proposed fee filing introduces a new subscription model, and IEX will notify all current Data Subscribers that before January 3, 2022, they will need to enter into a new Data Subscriber Agreement with IEX if they wish to continue receiving IEX Data in real time (either directly from IEX or via a third party). Furthermore, anyone who elects to receive Delayed IEX Data from a third party would no longer need to enter into a Data Subscriber Agreement with IEX, as required under IEX's current market data policies.

necessary technology tools to use) near instantaneous access to IEX Data.<sup>57</sup> These Delayed IEX Data Recipient that elect to receive Delayed IEX Data from a Data Subscriber of IEX Data will not incur any IEX fees.<sup>58</sup> Conversely, a market participant that values near instantaneous market data (e.g., algorithmic traders or other equities venues that use proprietary market data feeds to calculate the NBBO for each security) will have the option of paying \$3,000 per month to receive TOPS and DEEP. IEX also notes that any consumers can continue to obtain all the data in TOPS and DEEP free of charge on a T+1 basis from IEX's "HIST"<sup>59</sup> data product.<sup>60</sup>

IEX currently has 70 Data Subscribers who it believes are individuals<sup>61</sup> and expects that most, if not all, of the individual Data Subscribers will terminate their subscriptions for IEX Data and, if they choose to continue to receive IEX Data, can opt to receive Delayed IEX Data from a third-party vendor or through HIST. The remaining, non-individual, Data Subscribers are made up of approximately one-third IEX Members, one-third professional market participants that are not IEX Members (e.g., hedge funds and broker-dealers), and one-third data vendors. Based on IEX's general understanding of many of its current Data Subscribers' business models, IEX projects at least half of the data vendors will retain all of their existing subscriptions for IEX Data while the others may cancel their real-time data subscriptions,<sup>62</sup> and also anticipates that several Members and non-Members will cancel their real-time data subscriptions for either TOPS, DEEP, or both. Based on this analysis, IEX set its proposed fees at a range that it anticipates will, in the most likely scenario, result in revenue of approximately 25% above cost. IEX's analysis and projections are based on

the expertise and industry knowledge of relevant IEX personnel with respect to the broker-dealer community as well as market participants' sensitivity to market data costs. Having never charged for market data, IEX has no experience pricing market data. Furthermore, no equities exchange provides free redistribution of near real-time market data (that is delayed at least 15 milliseconds). Acknowledging the number of variables that could impact how much IEX recovers of its costs of providing IEX Data, the Exchange determined that a target return of 25% over costs is a reasonable goal for its market data fee model. If our projections are incorrect, revenues could range from "break even" (or even below aggregate costs) to an aggregate markup of *at most* approximately 95%.<sup>63</sup> However, the actual revenue will be determined by decisions made by each Data Subscriber based on the meaningful choices IEX proposes to offer for the receipt of market data.

IEX notes that other equities exchanges also offer delayed market data free of charge, but they define "delayed data" as data that is disseminated at least fifteen minutes after the same data is disseminated in real time.<sup>64</sup> These delayed data feeds are often used by brokerage firms<sup>65</sup> or online distributors of market data<sup>66</sup> to provide stock quote information free of charge, even if it is 15 minutes old.

In determining the appropriate delay interval, IEX sought to strike a balance between offering IEX Data at a reasonable and transparent price to market participants who require real-

time data, while also offering market participants a commercially viable option for the receipt of free IEX Data within a time period in which the data will remain useful to market participants who do not require near instantaneous real-time market data for trading purposes. Knowing there is no "exact science" to the determination of how long to delay data before allowing it to be retransmitted free of charge, IEX sought informal feedback from Members and other Data Subscribers. Based upon that informal feedback, IEX believes that most, if not all, non-electronic trading desks would be able to continue to use IEX Data if it was received subject to at least a fifteen-millisecond delay. Also based on that informal feedback, IEX believes that there will be some current Data Subscribers—e.g., algorithmic traders, data vendors, and any electronic trading platform that we believe typically use real-time data to calculate the NBBO—that will continue to pay for real-time IEX Data.

The proposed fees will not apply differently based upon the size or type of the market participant, but rather based upon the speed with which the Data Subscriber wishes to obtain IEX Data, based upon factors deemed relevant by each Data Subscriber, such as the cost to access and process IEX Data as well as business models.

Finally, IEX notes that this simple, transparent market data fee proposal will simplify IEX audits for compliance with applicable market data policies. Any Data Subscriber receiving real-time IEX Data will enter into a Data Subscriber Agreement with IEX, even if the Data Subscriber obtains their data through a third-party vendor. And any Delayed IEX Data Recipient does not need to enter into a Data Subscriber Agreement with IEX. Therefore, to assess compliance with applicable market data policies, IEX would simply audit whether any redistribution of IEX Data to any external, non-affiliate third party Data Subscribers is occurring, and if so, whether such redistribution is in real time or subject to at least a fifteen-millisecond delay.

In order to effectuate the proposed fee changes, IEX is proposing to make the following changes to the definitions in the "Market Data Fees" part of its Fee Schedule:

- Remove the definitions for "Internal Distribution Fee" and "External Distribution Fee" because IEX is not proposing to charge different fees for internal or external distribution and introduce the term "Distribution Fee" which IEX proposes to define as "the fee charged to any Data Subscriber that receives IEX market data directly from

<sup>57</sup> As noted above, IEX will only provide real-time IEX Data and will not itself delay the dissemination of IEX Data to Data Subscribers.

<sup>58</sup> The Delayed IEX Data Recipient may be subject to any fees charged by the redistributor of the Delayed IEX Data, based upon the contractual arrangement between the Delayed IEX Data Recipient and the provider of Delayed IEX Data. Such fees would not be paid to the Exchange.

<sup>59</sup> See IEX Rule 11.330(a)(5).

<sup>60</sup> HIST data is available for download at <https://iextrading.com/trading/market-data/#hist-download>.

<sup>61</sup> IEX's belief in this regard is based on an assessment that the Data Subscriber has a natural person name (i.e., first name—last name), rather than an entity name.

<sup>62</sup> IEX notes that not all Data Subscribers classified as vendors by IEX are established professional market data vendors. Some appear to redistribute IEX market data on a less sophisticated basis (e.g., startups redistributing data to a small number of customers).

<sup>63</sup> As discussed above, IEX believes it is unrealistic and unlikely that all current Data Subscribers will maintain their current subscriptions (including the 70 individual current Data Subscribers, all of whom IEX estimates will not maintain their current subscriptions), and therefore does not expect the markup over its costs of providing IEX Data to be anywhere near 95%.

<sup>64</sup> See, e.g., NYSE Comprehensive Market Data Policies, Section 7 (Delayed Data Policy), available at [https://www.nyse.com/publicdocs/data/Policy-ComprehensivPackage\\_PDP.pdf](https://www.nyse.com/publicdocs/data/Policy-ComprehensivPackage_PDP.pdf); Cboe Global Markets North American Data Policies, Section 5 (Delayed Data), available at [https://cdn.batstrading.com/resources/membership/Market\\_Data\\_Policies.pdf](https://cdn.batstrading.com/resources/membership/Market_Data_Policies.pdf); Nasdaq Delayed Data Policy, available at <http://www.nasdaqtrader.com/content/administrationsupport/policy/delayeddata/policy.pdf>.

<sup>65</sup> See, e.g., Interactive Brokers Delayed and Streaming Market Data, available at <https://www.interactivebrokers.com/en/software/webtrader/webtrader/marketdata/delayedandstreamingmarketdata.htm> ("Delayed market data is available for instruments for which you do not currently hold market data subscriptions.").

<sup>66</sup> See, e.g., MarketWatch Market Data Terms of Use, available at <https://www.marketwatch.com/site/investing-terms-of-use> ("comprehensive quotes and volume reflect trading in all markets and are delayed at least 15 minutes.").

the Exchange or indirectly through another Data Subscriber and then redistributes that data to an external, non-affiliate third party.”

- Define the term “Real-Time” as “IEX market data that is accessed, used, or distributed less than fifteen (15) milliseconds after it was made available by the Exchange. IEX provides only Real-Time IEX market data to Data Subscribers. A Data Subscriber may redistribute Real-Time IEX market data that it receives from the Exchange on a Real-Time basis to a natural person or entity. \*\*”

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

- Define the term “Data Subscriber” as “any natural person or entity that receives Real-Time IEX market data either directly from the Exchange or from another Data Subscriber. A Data Subscriber must enter into a Data Subscriber Agreement with IEX in order to receive Real-Time IEX market data.”

- Remove the definition of “Usage Fee” because IEX is not proposing to charge any usage fees for its market data.

- Add the following words before the “Service/Fee” table: “The following fees are assessed by IEX on market data recipients:”

IEX is also proposing to make the following changes to the “Service/Fee” table in the Market Data Fees section of the Fee Schedule:

- Delete the references to the Internal Distribution, External Distribution, and Usage Fees.

- Add the following entries to the table:

Service	Fee
DEEP Feed (Real-Time) .....	\$2,500 per month.*
TOPS Feed (Real-Time) .....	\$500 per month.*
Distribution Fee (Real-Time) ....	\$500 per month.*
DEEP Feed (Delayed) .....	FREE.
TOPS Feed (Delayed) .....	FREE.
Distribution Fee (Delayed) .....	FREE.

- Define the asterisk to say “These fees will be operative beginning January 3, 2022.”

- Define the double asterisk to say “The fees set forth above include only fees charged by IEX. Receipt of Real-Time IEX market data from a Data Subscriber or Delayed IEX market data from a Data Subscriber or other person

may be subject to fees agreed to between the Data Subscriber and recipient of such IEX market data.”

As noted above, the proposed rule change is effective on filing and the fees proposed herein will become operative on January 3, 2022.<sup>67</sup> Delayed implementation will provide an opportunity for current Data Subscribers to modify the manner in which they receive IEX Data, if they choose to do so, allowing them to obtain IEX Data without incurring any charge from IEX if they receive it subject to at least a fifteen-millisecond delay,<sup>68</sup> before the first month in which IEX will charge for access to IEX Data.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>69</sup> of the Act in general and furthers the objectives of Section 6(b)(4)<sup>70</sup> 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. The Exchange also believes that the proposed fee change promotes just and equitable principles of trade and will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5)<sup>71</sup> of the Act.

## Reasonableness

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. IEX understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) “platform” competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, IEX understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee’s terms fail to meet one

or more standards under the Exchange Act. IEX further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

As detailed in the Cost Study, IEX’s experience as an exchange strongly supports its belief that the fees each equities exchange charges for its proprietary market data are not subject to competitive forces.<sup>72</sup> As noted in the Purpose section, each exchange has a monopoly over its own market data, particularly its depth of book data which is not available on the SIPs. IEX believes that this monopoly over proprietary market data, coupled with the need of many market participants for real-time data in order to compete in a market system in which trading outcomes can depend on time differences measured in millionths of a second, allows exchanges to set their fees for proprietary market data without competitive constraints. As also noted in the Cost Study, the extreme differences between IEX’s aggregate cost to produce market data (as well as physical and logical connectivity products) and the prices charged by other exchanges for similar products and services clearly suggests that the pricing for market data is not constrained by competition.<sup>73</sup>

Further, IEX is not aware of and does not believe that there is any evidentiary support for the proposition that competition at the “platform level” constrains market data fees of the type proposed in this filing.

Because IEX believes that market data is not constrained by competition, IEX is not relying on an argument that the fees proposed in this filing are justified based on market competition. Instead, IEX believes the proposed fees are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for IEX’s aggregate costs of offering IEX Data to its Data Subscribers.

As discussed in the Purpose section, IEX believes that charging \$500 per month for TOPS, \$2,500 per month for DEEP, and \$500 per month for real-time redistribution of TOPS, DEEP, or both, is reasonable because it is based both on the relative costs to IEX to generate TOPS and DEEP, as well as IEX’s objective to make TOPS broadly

<sup>67</sup> January 3, 2022 is the first trading day of the new year.

<sup>68</sup> The Delayed IEX Data Recipient may be subject to any fees charged by the redistributor of the Delayed IEX Data, based upon the contractual arrangement between the Delayed IEX Data Recipient and the provider of Delayed IEX Data. Such fees would not be paid to the Exchange.

<sup>69</sup> 15 U.S.C. 78f(b).

<sup>70</sup> 15 U.S.C. 78f(b)(4).

<sup>71</sup> 15 U.S.C. 78f(b)(5).

<sup>72</sup> See Cost Study at 34.

<sup>73</sup> See Cost Study at 18–19, 24–25, and 31–32, respectively.



available to a range of market participants including long-term investors. Specifically, DEEP contains more data than TOPS, and is more resource intensive to produce and maintain because it aggregates displayed liquidity at multiple price levels. Therefore, IEX believes that it is reasonable to charge a higher fee for DEEP than for TOPS. Similarly, as discussed in the Purpose section, IEX believes that charging \$500 per month to any real-time redistributors of IEX Data is reasonable both because of the administrative and other costs IEX incurs in supporting the redistribution of IEX Data and to prevent the possible circumvention of IEX's market data fees by any redistributors of IEX Data.

IEX also believes the proposed fees are reasonable because they are designed to generate annual revenue of approximately \$3.1 million (reflecting a 25% markup over costs). As described in the Purpose section, IEX expects many of its current Data Subscribers to terminate their subscriptions for real-time data, instead opting to pay IEX no fee and to receive Delayed IEX Data through a redistribution agreement with a Data Subscriber. Accordingly, IEX believes that this fee methodology is reasonable because it both allows IEX to recoup some or all of its expenses for providing market data (with any additional revenue representing no more than what IEX believes to be a reasonable rate of return), while continuing to allow market participants to access IEX Data free of charge if they can wait at least fifteen milliseconds to receive it.

Additionally, IEX believes the proposed fees are reasonable because IEX is only charging Data Subscribers who use IEX Data in real time, and as described in the Purpose section, these Data Subscribers are the very ones creating the demand for real-time data, thereby causing IEX to incur the costs described above to produce real-time market data feeds.

IEX also believes that the proposed fees are reasonable because they are significantly less than the fees charged by competing equities exchanges, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data. As described above, the three large exchange families charge significantly more than IEX's proposed fees for real-time access to their proprietary market data. Significantly, they charge these fees without offering an option to receive delayed market data within a time frame that is usable for most trading purposes. The delayed data

offered by other exchanges is also offered free of charge, but only fifteen minutes after it is first disseminated, which IEX believes generally makes the data stale for any subscribers using the data to make trading decisions.

Finally, as described in the Purpose section above, IEX believes that this fee proposal is reasonable because it will not impose onerous audit requirements on Data Subscribers, because there will be no need to substantiate the number of users of IEX Data or the manner in which it is being used, but rather only whether it is being redistributed in real time or subject to at least a fifteen-millisecond delay.

#### Equitable Allocation and Non-Discrimination

IEX believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided, will apply equally to all Data Subscribers that require real-time data, and will minimize barriers to entry by providing IEX Data for free after [sic] at least fifteen milliseconds, thereby allowing all but the most latency sensitive market participants access to IEX Data within a time frame that is usable for most trading purposes.

The Exchange believes that providing Delayed IEX Data without charging any fees and charging as much as \$3,500 per month to Data Subscribers who require real-time data and/or wish to redistribute the same data is fair and equitable, and not unfairly discriminatory because it will enable all market participants to access Delayed IEX Data without paying any fees to IEX<sup>74</sup> and will charge only the users who require the fastest market data feeds available (which, as discussed in the Purpose section, drives much of the costs associated with creating and distributing IEX Data because it increases the resiliency, capacity and redundancy costs associated with IEX's proprietary market data feeds) for access to IEX Data. Additionally, as noted in the Purpose section, anyone can obtain TOPS and DEEP data free of charge on a T+1 basis through IEX's HIST data product. IEX believes this approach to market data fees will equitably distribute the costs of IEX Data among market participants whose business models require the highest speed market data available.

Furthermore, IEX believes that charging \$500 per month for TOPS,

\$2,500 per month for DEEP, and \$500 per month for real-time redistribution of TOPS, DEEP, or both, is fair and equitable because it is based both on the relative costs to IEX to generate TOPS and DEEP, as well as IEX's objective to make TOPS broadly available to a range of market participants including long-term investors. As described in the Purpose section, DEEP contains more data than TOPS, and is more resource intensive to produce and maintain because it aggregates displayed liquidity at multiple price levels. Therefore, IEX believes that it is fair and equitable to charge a higher fee for DEEP than for TOPS. Similarly, as discussed in the Purpose section, IEX believes that charging \$500 per month to any real-time redistributors of IEX Data is fair and equitable both because of the administrative and other costs IEX incurs in supporting the redistribution of IEX Data and to prevent the possible circumvention of IEX's market data fees by any redistributors of IEX Data.

The Exchange further believes that the proposed fees are reasonable, fair, and equitable, and non-discriminatory because they will apply to all Data Subscribers in the same manner based on the type of market data needed. All similarly situated market participants are subject to the same fees. The fees also do not depend on any distinctions between Members, customers, broker-dealers, or any other entity, because they are solely determined by the individual Data Subscriber's business needs. For example, as discussed in the Purpose section, if the Data Subscriber is a market data vendor that resells IEX Data, IEX believes that Data Subscriber is likely to continue to subscribe for real-time IEX Data and pay the distribution fee because it is commercially beneficial to that Data Subscriber. By contrast, a non-Member Data Subscriber is far more likely to not require IEX Data in real time, and is therefore more likely to unsubscribe from one or both of IEX's real-time IEX Data and instead elect to receive Delayed IEX Data from a vendor or via HIST.

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee, with the option of receiving free data from a third party on at least a fifteen-millisecond

<sup>74</sup> Although IEX will not charge any distribution fees to a redistributor of Delayed IEX Data, the distributor may still charge fees to any Delayed IEX Data Recipients.



delay<sup>75</sup> or for absolutely no cost on a T+1 basis using HIST, will enable a broad range of market participants to continue to receive IEX Data, thereby facilitating the economically efficient execution of securities transactions on IEX, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on IEX when it is the best market.

For the foregoing reasons, the Exchange believes that the proposed fee is reasonable, equitably allocated, and not unfairly discriminatory.

#### *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 intramarket or intermarket 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. The proposed fees are a cost-based fee, that are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing equities exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

The Exchange also does not believe that the proposed fees will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants are entitled to receive IEX Data free of charge after [sic] at least a fifteen-millisecond delay. Providing a commercially viable free data feed to Data Subscribers is designed to avoid creating barriers to entry for smaller Members, thereby promoting intramarket competition. In addition, even Members [sic] subject to relatively higher fees, because they are paying up to \$3,500 per month for IEX Data, will still be subject to a relatively low aggregate fee (and significantly less than the fees charged by competing exchanges, as described above) and IEX thus believes that the proposed fee will not operate as a barrier to entry for such Members [sic] or impose a significant business cost burden on such Members [sic] relative to their levels of business activity. Finally, as noted in the Purpose and Statutory Basis sections, IEX

believes that not requiring any onerous audits for Data Subscribers will be of equal benefit to all Data Subscribers.

#### *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)<sup>76</sup> 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)<sup>77</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-IEX-2021-14 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 No. SR-IEX-2021-14. 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 (<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 Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange and on its internet website at [www.iextrading.com](http://www.iextrading.com). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-IEX-2021-14, and should be submitted on or before December 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>78</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-25021 Filed 11-16-21; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93553; File No. SR-NYSEArca-2021-67]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201-E**

November 10, 2021.

On September 20, 2021, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the One River Carbon Neutral Bitcoin Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule

<sup>75</sup> Distributors of Delayed IEX Data may charge a fee for the data, but that fee is not payable to IEX.

<sup>76</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>77</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>78</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.