

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99411; File No. SR-IEX-2024-03)

January 22, 2024

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Two Aspects of its Recent Post Only Filing and to Correct One Nonsubstantive Typographical Error Introduced in the Post Only Filing

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on January 16, 2024, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 the 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 Securities and Exchange Commission (“Commission”) a proposed rule change to clarify two aspects of its recent Post Only Filing⁶ and to correct one nonsubstantive typographical error introduced in the Post Only Filing. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁷ and provided the Commission with the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See Securities Exchange Act Release No. 98988 (November 20, 2023), 88 FR 82926 (November 27, 2023) (SR-IEX-2023-13) (“Post Only Filing”).

⁷ 15 U.S.C. 78s(b)(3)(A).

notice required by Rule 19b-4(f)(6) thereunder.⁸

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange recently filed a rule change to introduce a Post Only⁹ order parameter instruction and a related Trade Now¹⁰ order instruction.¹¹ The Post Only Filing was effective on filing, and IEX expects to implement the new functionality in February 2024.¹² IEX will issue a Trading Alert at least ten (10) days in advance of the implementation date.¹³

The Exchange is making this filing to clarify two aspects of the Post Only Filing and to correct one nonsubstantive typographical error introduced in the Post Only Filing. First, IEX

⁸ 17 CFR 240.19b-4.

⁹ See IEX Rule 11.190(b)(20).

¹⁰ See IEX Rule 11.190(b)(21).

¹¹ See supra note 6.

¹² See IEX Trading Alert # 2024-002, available at <https://iextrading.com/alerts/#/238>.

¹³ See supra note 6.

proposes to amend IEX Rule 11.190(a)(1)(H), which currently states that a non-displayed limit order “May include a Trade Now instruction...,” to replace the word “May” with “Will” to reflect that all non-displayed limit orders will include a Trade Now instruction. This proposed change is consistent with the Post Only Filing, which states that “non-displayed limit orders (including non-displayed portions of reserve orders and non-displayed Discretionary Limit orders) would always include a Trade Now order instruction...”¹⁴ The proposed change is also consistent with provisions in IEX Rules 11.190(b)(2)(J) and 11.190(b)(7)(F)(xi),¹⁵ which provide that non-displayed portions of reserve orders and Discretionary Limit orders, respectively, “will include a Trade Now instruction...” IEX thus proposes to specify that all non-displayed limit orders will always include a Trade Now instruction.

Second, IEX proposes to clarify that regular limit orders with the Post Only order instruction are eligible to trade in the Pre-Market Hours¹⁶ and Post-Market Hours¹⁷, depending upon their order’s Time-in-Force (“TIF”).¹⁸ IEX’s Post Only order instruction may only be applied to limit orders with a TIF of DAY, GTX, SYS, or GTT.¹⁹ However, although the Post Only Filing states that “Post Only orders must have a [TIF] of DAY, GTX, SYS, or GTT because they will only trade during Regular Market Hours”,²⁰ regular limit orders with the Post Only order instruction and a TIF of GTT or SYS can also trade during the Pre-Market and Post-Market Hours, while regular limit orders with the Post Only order instruction and a TIF of GTX

¹⁴ See Post Only Filing, 88 FR 82926, 82927.

¹⁵ As described below, IEX Rule 11.190(b)(7)(F)(xi) was erroneously numbered 11.190(b)(7)(F)(ix); this rule filing corrects the numbering of the subparagraph.

¹⁶ See IEX Rule 1.160(z).

¹⁷ See IEX Rule 1.160(aa).

¹⁸ See IEX Rule 11.190(c).

¹⁹ See IEX Rule 11.190(b)(20)(E).

²⁰ See Post Only Filing, 88 FR 82926, 82927.

can also trade during the Post-Market Hours. Accordingly, IEX proposes to clarify in this rule change proposal that the phrase “because they will only trade during Regular Market Hours” in the Post Only Filing was inaccurately underinclusive, and the TIFs apply as set forth in IEX Rule 11.190(b)(20).

Finally, IEX proposes to amend IEX Rule 11.190(b)(7)(F) to correct a nonsubstantive typographical error introduced in the Post Only Filing. Specifically, the Post Only Filing added two new subparagraphs to IEX Rule 11.190(b)(7)(F), which it labeled “(x)” and “(ix).” IEX proposes to modify the label on the second new subparagraph to change it from (“ix”) to instead be (“xi”), which is the next sequential number.²¹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5),²³ in particular, in that it would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to enforce compliance by the Exchange’s Members²⁴ and the public with the provisions of the rules of the Exchange. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange’s rules by clarifying that: (i) all non-displayed limit orders will always include a Trade Now instruction; (ii) regular displayed limit orders with a Post Only order instruction may trade in the Pre-Market and Post-Market Hours if permitted by their TIFs; and (iii) the newly-added subparagraph (ix) of IEX Rule 11.190(b)(7)(F) should be renumbered

²¹ This rule change will not impact the pre-existing IEX Rule 11.190(b)(7)(F)(ix), which will continue to read “Discretionary Limit orders are subject to the Price Sliding provisions of IEX Rule 11.190(h).”

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ See IEX Rule 1.160(s).

to be subparagraph (xi).

This rule filing does not propose any substantive changes to the functionality of the Post Only and Trade Now order instructions, but rather simply clarifies the functionality introduced in the Post Only Filing and removes the inconsistencies described in the Purpose section.

Therefore, the Exchange does not believe that these proposed changes raise any new or novel issues not already considered by the Commission. IEX also believes that the proposed rule change is nondiscriminatory since all Members are eligible to enter orders with Post Only and/or Trade Now instructions, and these changes will provide the same additional clarity to all Members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described in the Purpose and Statutory Basis sections, this rule filing merely proposes to clarify which orders will always include a Trade Now instruction and the trading hours during which Post Only orders can trade, as well as to correct one nonsubstantive typographical error introduced in the Post Only Filing. This proposal would not make any substantive changes to the IEX's new Post Only and Trade Now functionality and is not designed to address any competitive issues. Because the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may be operative concurrent with IEX's planned implementation of the Post Only Filing in February 2024. The Exchange states that the proposal clarifies the applicable trading sessions and Trade Now functionality as it applies to the Post Only order type and corrects one nonsubstantive typographical error concerning subparagraph numbering in the rule text. Additionally, the Exchange states that waiver of the operative delay would allow these clarifying changes to take effect concurrent with the implementation of the Post Only and Trade Now functionality, which will benefit all market participants who submit either Post Only or Trade Now-eligible orders to the Exchange.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

Because the proposal raises no novel regulatory issues and makes only clarifying changes, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.²⁹

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 change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-03 on the subject line.

²⁹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to file number SR-IEX-2024-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-IEX-2024-03 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,

Assistant Secretary.

³⁰ 17 CFR 200.30-3(a)(12).