

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83862; File No. SR-IEX-2018-18)

August 16, 2018

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Definition of the Cross Price Constraint Utilized in the Opening Process for Non-IEX-Listed Securities Pursuant to Rule 11.231

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 9, 2018, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“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 Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the definition of the Cross Price Constraint utilized in the opening process for non-IEX-listed securities pursuant to Rule 11.231. The Exchange has designated this rule change as “non-

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CRF 240.19b-4.

controversial” under Section 19(b)(3)(A) of the Act<sup>6</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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 statement [sic] 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

Background

The purpose of this proposed rule change is to amend the definition of the Cross Price Constraint utilized in the opening process for non-IEX-listed securities pursuant to Rule 11.231. On July 24, 2017, the Commission approved a proposed rule change filed by the Exchange to amend IEX Rule 11.231 to modify the manner in which the Exchange opens trading for non-IEX-listed securities beginning at the start of Regular Market Hours (the “Opening Process”).<sup>8</sup>

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> See Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017).

### Opening Process for Non-IEX-Listed Securities

Pursuant to Rule 11.231, the Exchange attempts to perform the Opening Process in each non-IEX-listed security, in which all eligible interest resting on the Order Book in the Pre-Market Session available for continuous trading (i.e., orders on the “Continuous Book”) as well as all eligible interest queued for execution in the Regular Market Session (i.e., orders on the “Cross Book”) are executed at a single price (the “Opening Match”). Prior to the beginning of Regular Market Hours, Users who wish to participate in the Opening Process may enter limit, market, and pegged orders designated with a time-in-force of DAY and limit orders designated with a time-in-force of GTX, which shall queue in the System and are eligible for execution in the Opening Process (orders on the Cross Book); interest resting on the Order Book in the Pre-Market Session available for continuous trading (i.e., orders on the Continuous Book) are also eligible for execution in the Opening Process (collectively, “Cross Eligible Orders”).

Cross Eligible Orders resting on the Continuous Book are ranked by the price at which they are resting on the Continuous Book and Cross Eligible Orders resting on the Cross Book are ranked by the limit price defined by the User, if any, except in the case of pegged orders, which are ranked by their current book price (in each case, the order’s “resting price”).<sup>9</sup>

### IEX Order Collar

Rule 11.190(f)(1) sets forth the operation of the IEX Order Collar. Except for orders that are eligible for the Cross Book, the IEX Order Collar prevents any incoming order (including those marked ISO), or order resting on the Order Book, from executing at prices outside of the Order Collar price range.<sup>10</sup> The Order Collar price range is calculated by applying the numerical

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<sup>9</sup> See Rule 11.220(a)(2). See also Rule 11.231(a)(1).

<sup>10</sup> See Rule 11.190(f)(1) for a complete description of the IEX Order Collar.

guidelines for clearly erroneous executions to the Order Collar Reference Price.<sup>11</sup> The Order Collar Reference Price is defined as the most current of the following:<sup>12</sup>

- The consolidated last sale price disseminated during the Regular Market Session on the current trade date;
- Last trade price disseminated outside of the Regular Market Session (Form T, as communicated by the relevant SIP) on trade date which other than for the Form T designation would have been considered a valid last sale price; or
- If neither of the prices above are available, the prior days Official Closing Price from the listing exchange, adjusted to account for corporate actions, news events, etc.<sup>13</sup>

#### Proposed Changes

The Exchange recently identified a minor omission in the Cross Price Constraint rule provisions with respect to manner in which the IEX Order Collar price range applies. Specifically, as described above, the Exchange does not apply the IEX Order Collar to orders eligible for the Cross Book so that it does not impact their relative priority of execution.<sup>14</sup> However, while the IEX Order Collar does not apply to orders eligible for the Cross Book, the current implementation of the Cross Price Constraint mechanism is in fact adjusted by the IEX Order Collar price range in limited circumstances when the upper or lower threshold of such

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<sup>11</sup> The upper (lower) Order Collar price range is calculated by adding (subtracting) the appropriate percentage (consistent with the numerical guidelines for clearly erroneous executions) to the Order Collar Reference Price.

<sup>12</sup> In the event there is no valid Order Collar Reference Price, the Exchange generally rejects orders for the security. See Rule 11.190(f)(1).

<sup>13</sup> See Rule 11.190(f)(1)(A).

<sup>14</sup> See Securities Exchange Act Release No. 81662 (September 20, 2017), 82 FR 44861 (September 26, 2017) (SR-IEX-2017-31), a proposed rule change to clarify the inapplicability of the Exchange's Order Collar and Router Constraint to certain orders that are eligible for participation in the opening process for non-IEX-listed securities pursuant to Rule 11.231, or for auctions in IEX-listed securities pursuant to Rule 11.350.

price is less aggressive than the upper or lower threshold of the Cross Price Constraint, respectively. In other words, if the Away Protected NBB is below the lower threshold of the IEX Order Collar price range, or the Away Protected NBO is above the upper threshold of the IEX Order Collar price range, the Opening Process execution is constrained by the upper and/or lower thresholds of the IEX Order Collar. Adjusting the Cross Price Constraint by the IEX Order Collar price range does not impact the relative priority of orders eligible for the Cross Book because the constraint is not applied at the order level but instead to the cross price, in connection with the Opening Match.

Based on the foregoing, the Exchange believes the existing Cross Price Constraint definition should explicitly account for the IEX Order Collar price range. Accordingly, the Exchange is proposing to amend rule 11.231(c)(1)(iii) to explicitly state that the Cross Price Constraint is adjusted by the IEX Order Collar price range, as described below:

- The upper threshold price of the Cross Price Constraint is equal to the lesser of the price of the Away Protected NBO or the upper threshold of the Order Collar price range for the Regular Market Session, calculated pursuant to Rule 11.190(f)(1)(C), except in the event that an Away Protected Bid is crossing an Away Protected Offer, the upper threshold price is equal to the greater of five cents (\$0.05) or one half of a percent (0.5%) higher than the lowest Away Protected Offer; and
- The lower threshold price of the Cross Price Constraint is equal to the greater of the price of the Away Protected NBB or the lower threshold of the Order Collar price range for the Regular Market Session, calculated pursuant to Rule 11.190(f)(1)(C), except in the event that an Away Protected Bid is crossing an Away Protected Offer, the lower threshold price is equal to the greater of five cents (\$0.05) or one half of a percent (0.5%) lower

than the highest Away Protected Bid.<sup>15</sup>

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>16</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, and, in general, to protect investors and the public interest.

The Exchange believes it is consistent with the protection of investors and the public interest to constrain the Opening Process match by the IEX Order Collar price range because executions outside of the Order Collar price range are significantly dislocated from recent trading activity (as measured by the Order Collar Reference Price), and often are the result of erroneous system processing or manual trading errors. The Exchange also notes that executions

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<sup>15</sup> Rule 11.231(b)(2) states in relevant part that an imbalance of Cross Eligible Orders on the buy side or sell side may result in orders that are not executed in whole or in part. Thus, as part of the transition to the Regular Market Session (see Rule 1.160(gg)), unexecuted Cross Eligible Orders to buy (sell) that are priced at or above (below) the Cross Price Constraint (but remain unexecuted due to an imbalance of Cross Eligible Orders) will price slide pursuant to IEX Rule 11.190(h) and all remaining unexecuted Cross Eligible Orders, along with any orders that were either ineligible to participate in the Opening Process or too passive to be executed in the Opening Process, will be released to the Order Book for continuous trading or canceled in accordance with the terms of the order. Thus, the Exchange notes that when the Cross Price Constraint is narrowed because the Away Protected NBB is below the lower threshold of the IEX Order Collar price range, or the Away Protected NBO is above the upper threshold of the IEX Order Collar price range, there may be a smaller quantity of shares executed in the Opening Process, which may result in a larger quantity of unexecuted Cross Eligible Order shares that are priced equal to or more aggressively than the more narrow Cross Price Constraint (as proposed) transitioning to the RMS and price sliding pursuant to Rule 11.190(h), or canceling pursuant to the terms of the order, as applicable.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

outside of the IEX Order Collar price range often meet the clearly erroneous criteria and are therefore eligible to be reviewed for cancellation pursuant to Rule 11.270. Thus, the Exchange believes that applying the IEX Order Collar to the cross price in connection with the Opening Match is consistent with the protection of investors and the public interest because it is designed to prevent executions at dislocated prices that are significantly dislocated from recent trading activity and may be canceled pursuant to Rule 11.270.

Furthermore, the Exchange believes that the proposed rule change does not materially alter the Opening Process, because the Opening Process match is already subject to the Cross Price Constraint. Instead, the Exchange believes the proposed changes are designed to make the Cross Price Constraint definition more robust by accounting for the rare scenarios where the Away Protected NBB is below the lower threshold of the IEX Order Collar price range, or the Away Protected NBO is above the upper threshold of the IEX Order Collar price range (i.e., when the spread between the Away Protected NBBO is excessively wide, such that it may not reflect the market for the security). The Exchange further believes that the proposed rule changes are consistent with the protection of investors and the public interest because the proposed changes are designed to avoid any potential confusion regarding the Opening Process functionality, and to make the Exchange's rules more accurate, complete, and descriptive of the System's functionality.

**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 believes that the proposed changes do not impact competition in any respect since it is designed to avoid any potential confusion regarding the Opening Process functionality, and to

make the Exchange's rules more accurate, complete, and descriptive of the System's functionality without materially changing the Opening Process. In addition, the Exchange believes there will be no impact on intra-market competition, as the proposed changes will apply equally to all Members and therefore no new burdens are being proposed. Furthermore, the Exchange believes there will be no impact on intra-market competition because as discussed above, the proposed changes to the Cross Price Constraint do not impact the relative execution priority of orders eligible for the Cross Book, as the constraint is not applied at the order level but instead to the cross price in connection with the Opening Match.

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 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 Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>20</sup> normally does not become operative for 30 days after the date of its filing. However, pursuant to Rule 19b-

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with 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.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).



4(f)(6)(iii),<sup>21</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange represents that the proposed rule change would protect against executions in the Opening Process that are significantly dislocated from recent trading activity and may be cancelled pursuant to Rule 11.270. In addition, the Exchange notes that while the proposed change to the Cross Price Constraint may affect the cross price in limited circumstances, there will be no change to the relative priority of execution for Cross Eligible Orders. Furthermore, the Exchange states that waiver of the operative delay would allow the Exchange to update its rules without delay to avoid potential confusion among market participants regarding the Exchange's Opening Process functionality and immediately protect against dislocated executions in the Opening Process. The Commission does not believe that any new or novel issues are raised by the proposal. For these reasons, 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 proposed rule change operative upon filing.<sup>22</sup>

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

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<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>22</sup> 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).

Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>23</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2018-18 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-IEX-2018-18. This file number should be included on the subject line if e-mail 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

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<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

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-IEX-2018-18, 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.<sup>24</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).