

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90197; File No. SR-IEX-2020-16)

October 15, 2020

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add an Offset Peg Order Type

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 October 5, 2020, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act<sup>4</sup>, and Rule 19b-4 thereunder<sup>5</sup>, IEX is filing with the Commission a proposed rule change to add a new order type (a “Offset Peg” or “O-Peg” order) that pegs to the primary quote<sup>6</sup>, plus or minus an offset amount. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>7</sup> and provided the Commission with the notice required by Rule 19b-

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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 CFR 240.19b-4.

<sup>6</sup> The primary quote is the national best bid for a buy order or the national best offer for a sell order. See IEX Rule 1.160(u).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

4(f)(6) thereunder.<sup>8</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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190 to add a new Offset Peg or O-Peg order type that pegs to the primary quote<sup>9</sup>, plus or minus an offset amount specified by the User<sup>10</sup>. In addition, the Exchange proposes two accommodating amendments to IEX Rule 11.190 to describe how O-Peg orders will behave when executed at the Midpoint Price<sup>11</sup> and in locked and crossed markets.

Currently, the Exchange offers three types of pegged orders – primary peg, midpoint peg

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<sup>8</sup> 17 CFR 240.19b-4.

<sup>9</sup> See supra note 6.

<sup>10</sup> See IEX Rule 1.160(qq).

<sup>11</sup> See IEX Rule 1.160(t),

and Discretionary Peg<sup>12</sup> – each of which are non-displayed orders that upon entry into the System<sup>13</sup> and while resting on the Order Book<sup>14</sup>, are pegged to a reference price based on the national best bid and offer (“NBBO”) and the price of the order is automatically adjusted by the System in response to changes in the NBBO.

The Exchange proposes to add a new type of pegged order – an Offset Peg order – that is a non-displayed pegged order that upon entry and when posting to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the primary quote (i.e., the NBB<sup>15</sup> for buy orders and NBO<sup>16</sup> for sell orders) plus or minus an offset amount specified by the User or the order’s limit price, if any. While resting on the Order Book, (i) a buy order is automatically adjusted by the System in response to changes in the NBB plus or minus the offset amount up to the order’s limit price, if any; and (ii) a sell order is automatically adjusted by the System in response to changes in the NBO plus or minus the offset amount down to the order’s limit price, if any; and (iii) in locked and crossed markets, slide one MPV<sup>17</sup> less aggressive than the locking price or crossing price (i.e., the lowest Protected Offer<sup>18</sup> for buy orders and the highest Protected Bid<sup>19</sup> for sell orders).<sup>20</sup> Further, an Offset Peg order

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<sup>12</sup> IEX has two other order types that are based on the discretionary peg order type: the Retail Liquidity Provider order and the Corporate Discretionary Peg order. See IEX Rule 11.190(b)(14) and (16).

<sup>13</sup> See IEX Rule 1.160(nn).

<sup>14</sup> See IEX Rule 1.160(p).

<sup>15</sup> See IEX Rule 1.160(u).

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

<sup>17</sup> See IEX Rule 11.210.

<sup>18</sup> See IEX Rule 1.160(bb).

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

<sup>20</sup> As with all pegged orders, each time the price of an Offset Peg order is adjusted by the System it receives a new timestamp, as described in IEX Rule 11.220.

would not be eligible to trade when the market is locked or crossed, either upon order entry or when resting on the Order Book.

While Offset Peg orders would not be limited to trading more aggressively than the primary quote, based on informal feedback from Members, IEX understands that Offset Peg orders would be useful to market participants seeking to trade between the primary quote and the Midpoint Price.

Accordingly, IEX proposes to amend subparagraph (b)(13) of IEX Rule 11.190, which is currently reserved, to add the Offset Peg order. As proposed, an Offset Peg order:

- (A) Must be a pegged order.
- (B) Must have a TIF of DAY, GTT, GTX, or SYS, as described in IEX Rule 11.190(a)(3).
- (C) Is not eligible for routing pursuant to IEX Rule 11.230(b) and (c)(2).
- (D) May not be an ISO, as defined in paragraph (12) above.
- (E) May be submitted with a limit price or without a limit price (an “unpriced pegged order”).
- (F) Is eligible to trade only during the Regular Market Session. As provided in IEX Rule 11.190(a)(3)(E)(iii), any pegged order marked with a TIF of DAY that is submitted to the System before the opening of the Regular Market Session will be queued by the System until the start of the Regular Market Session; any pegged order that is marked with a TIF other than DAY will be rejected when submitted to the System during the Pre-Market Session. Any pegged order submitted into the System after the closing of the Regular Market Session will be rejected.
- (G) May be a MQTY, as defined in paragraph (11) below.
- (H) Is not eligible to display. Pegged orders are always non-displayed.
- (I) May be an odd lot, round lot, or mixed lot.
- (J) Is eligible to be invited by the System to Recheck as described in IEX Rule 11.230(a)(4)(D).
- (K) Is not eligible to trade when the market is locked or crossed.
- (L) May be submitted with an offset amount that is either aggressive or passive compared to the primary quote. If the offset amount would result in the price of an Offset Peg order being more aggressive than the Midpoint Price, the offset amount will be reduced so that the order is priced at the Midpoint Price until such time as the full value of the offset amount will not result in the price of the Offset Peg order being more aggressive than the Midpoint Price,

except when the order is an active order.<sup>21</sup> If the offset amount would result in the price of an Offset Peg order being in an increment smaller than specified in IEX Rule 11.210, the price of a buy order will be rounded down and the price of a sell order will be rounded up to the nearest permissible increment. If no offset amount is specified, the System will consider the offset amount to be zero.

In addition, the Exchange proposes two accommodating amendments to other IEX rules. First, IEX Rule 11.190(a)(3) would be amended to specify that an Offset Peg may be executed in sub-pennies if necessary when the execution is at or constrained to the midpoint and the order executes at the Midpoint Price. This is consistent with the fact that midpoint peg orders and Discretionary Peg orders can execute at a Midpoint Price in sub-pennies.<sup>22</sup> Second, the Exchange proposes amendments to IEX Rule 11.190(h) to describe the manner in which Offset Peg orders will operate in locked and crossed markets. Specifically, when the market becomes locked, Offset Peg orders resting on or posting to the Order Book will be priced at the less aggressive of the locking price plus or minus an offset amount or the order's limit price, if any.<sup>23</sup> However, an Offset Peg with an offset amount that would otherwise result in the order being priced more aggressive than the locking price will be priced at the locking price pursuant to the Midpoint Price Constraint. When the market becomes crossed, the Exchange considers the Midpoint Price to be indeterminable,<sup>24</sup> and resting Offset Peg orders that would otherwise be subject to the Midpoint Price Constraint pursuant to IEX Rule 11.190(h)(3)(D) (i.e., because the price of the order would be more aggressive than the Midpoint Price) will be priced to be no more aggressive

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<sup>21</sup> See IEX Rule 1.160(b).

<sup>22</sup> An execution at a sub-penny Midpoint Price is not prohibited by Rule 612 under Regulation NMS so long as the execution did not result from an impermissible sub-penny order or quotation. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37556 (June 29, 2005) (File No. S7-10-04) (“NMS Adopting Release”).

<sup>23</sup> See IEX Rule 11.190(h)(3)(C).

<sup>24</sup> See IEX Rule 11.190(h)(3)(D).

than the crossing price, the lowest Protected Offer for buy orders and the highest Protected Bid for sell orders. Further, as proposed, Offset Peg orders resting on or posting to the Order Book while the market is crossed are priced at the least aggressive of (1) the crossing price (the lowest Protected Offer for buy orders and the highest Protected Bid for sell orders) plus or minus an offset amount, (2) the crossing price (the lowest Protected Offer for buy orders and the highest Protected Bid for sell orders), or (3) the order's limit price, if any.

The methodology for pricing Offset Peg orders during locked and crossed markets is designed to price such orders at the least aggressive price that is consistent with the terms of the order so as to avoid exacerbating the lock or cross.

In addition, Offset Peg orders will not be eligible to trade when the market is locked or crossed, and an Offset Peg order that would otherwise be eligible to trade against an active order will surrender its precedence on the Order Book for the duration of the System processing the current active order, pursuant to IEX Rule 11.220(a)(5).

The manner in which Offset Peg orders will operate in locked and crossed markets (as proposed) is similar to the manner in which other pegged order types operate, except that other pegged orders are eligible to trade when the market is locked or crossed. Offset Peg orders are designed to enable a market participant to capture part of the spread between the NBBO; when the NBBO is locked or crossed there is uncertainty as to the spread. Consequently, the Exchange believes that Offset Peg orders should not trade in such circumstances.

The Exchange notes that for many years other national securities exchanges have offered order types that peg to the NBB and/or NBO plus or minus an offset amount.<sup>25</sup> In this regard, the

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<sup>25</sup> See, e.g., Securities Exchange Act Release No. 52449 (September 15, 2005), 70 FR 55647 (September 22, 2005) (File No. SR-NASD-2005-107).

Exchange notes that this proposed rule change is substantially similar to order types offered by the Nasdaq Stock Market LLC (“Nasdaq”), NYSE Arca, Inc. (“Arca”) and CBOE BZX Exchange, Inc. (“BZX”), each of which offer a nondisplayed primary or market pegged order type or attribute that pegs to the inside quotation on the same side of the market (i.e., the NBB for a buy order and the NBO for a sell order) and may also specify an aggressive or passive offset amount.<sup>26</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>28</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to increase competition among execution venues by providing an additional pegged order type that market participants can use to trade at an offset to the primary quote, as described in the Purpose section and thereby enable the Exchange to better compete with order types on other national securities exchanges that offer similar features to market participants.

Further, IEX believes that the proposal is consistent with the protection of investors and

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<sup>26</sup> See Nasdaq Rule 4703(d), NYSE Arca Rule 7.31-E(h)(1), and Cboe BZX Rule 11.9(c)(8)(A).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

the public interest in that the Offset Peg order type would provide additional flexibility to market participants in their use of pegging orders. As described in the Purpose section, IEX already offers several different types of pegging orders that trade with reference to the primary quote (Discretionary Peg and primary peg), at the Midpoint Price (Midpoint Peg), and in some cases with the ability to also exercise price discretion in specified circumstances (Discretionary Peg and primary peg). As proposed, the Offset Peg order would function in a similar manner but provide flexibility to market participants to specify an offset to the primary quote. Such functionality could be used for a number of purposes, including to mitigate risk by posting an order at a price that is lower or higher than the prevailing NBB or NBO. Although broker-dealers could implement similar functionality on their own by consuming market data feeds and sending limit orders to the Exchange at prices that are offset from the NBBO, implementing this functionality through an exchange order type ensures that it is widely available to market participants on a fair and non-discriminatory basis. At the same time, the offset instruction would be offered on a purely voluntary basis, and with flexibility for Users to choose the amount of any offset, thereby providing flexibility to continue using current pegged order types without a User specified offset and to choose different offsets based on a User's specific needs. The Exchange does not believe that providing flexibility to Users to select the amount of any offset raises any significant or novel concerns, since similar offset functionality is already available on other national securities exchanges, as discussed in the Purpose section.<sup>29</sup>

Further, IEX believes that it is consistent with the Act to not permit an Offset Peg order to trade when the market is locked or crossed. While IEX's current pegged order types are eligible to trade in such circumstances, they are repriced away from the locking and crossing

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<sup>29</sup> See supra note 26

price (except for Midpoint Peg orders in a locked market which continue to be priced at the locking Midpoint Price) which is designed to reduce the incidence of trading when the market is locked or crossed. As noted in the Purpose section, Offset Peg orders are designed to enable a market participant to capture part of the spread between the NBBO; when the NBBO is locked or crossed there is uncertainty as to the spread. Consequently, the Exchange believes that Offset Peg orders should not trade in such circumstances.<sup>30</sup> Moreover, similar order types on other national securities exchange are explicitly not eligible to trade in locked and crossed markets.<sup>31</sup> Additionally, IEX believes that the methodology for pricing Offset Peg orders during locked and crossed markets is consistent with the Act because it is designed to price such orders at the least aggressive price that is consistent with the terms of the order so as to avoid exacerbating the lock or cross.

In addition, the Exchange believes that it is consistent with the Act to round the price of a buy order down and a sell order up to the nearest permissible increment if the offset amount would result in the price of an Offset Peg order being in an increment smaller than specified in IEX Rule 11.210. Rounding assures that IEX is compliant with Regulation NMS Rule 612<sup>32</sup> and

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<sup>30</sup> In contrast, IEX's other pegged order types are designed to enable a market participant to capture liquidity pursuant to the terms of the order type so the Exchange has chosen not to impose a restriction on trading in locked and crossed markets.

<sup>31</sup> See, e.g., NYSE Arca Rule 7.31-E(h)(1)(B).

<sup>32</sup> See 17 CFR 242.612 and FAQs 8, 1, and 2 in Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS, available at <https://www.sec.gov/divisions/marketreg/subpenny612faq.htm> which provides that although exchanges (and broker-dealers) may not accept and round orders in NMS stocks explicitly priced in sub-penny increments (FAQs 8 and 1), they may accept such orders when the order is not "explicitly" priced in an impermissible sub-penny increment, meaning that a calculation must be performed to obtain the price of the order, in which case the exchange or broker-dealer may round the price of the stock to determine the "actual explicit price for the order." (FAQ 2). IEX believes that Offset Peg orders would

IEX Rule 11.210. Moreover, this approach is consistent with the way other national securities exchanges handle pegged orders.<sup>33</sup>

Thus, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission in connection with existing order types offered by the IEX and other national securities exchanges.

**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. To the contrary, the proposal is a competitive response to similar order types available on other exchanges.

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. Competing exchanges have and can continue to adopt similar order types, subject to the SEC rule change process, as discussed in the Purpose and Statutory Basis sections.<sup>34</sup>

The Exchange also does not believe that the proposed rule change will impose any

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not be explicitly priced in sub-penny increments even if the offset amount specified is in a sub-penny increment because the Exchange would need to perform a calculation to obtain the price of the order by applying the offset amount to the NBB or NBO as applicable. Accordingly, IEX believes that rounding as proposed is consistent with Rule 612 under Regulation NMS and relevant FAQs, which provides that exchanges (and broker-dealers) may not accept and round orders in NMS stocks explicitly priced in sub-penny increments (FAQs 8 and 1), except for when the order is not “explicitly” priced in an impermissible sub-penny increment, in which case the exchange may round the price of the stock to determine the “actual explicit price for the order.” (FAQ 2).

<sup>33</sup> See e.g. Cboe US Equities FIX Specification (Version 2.8.18) describing treatment of Tag 211 regarding “Pegged Difference” available at [https://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_FIX\\_Specification.pdf](https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf).

<sup>34</sup> See *supra* notes 26 and 29.

burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members would be eligible to use an Offset Peg order type on the same terms.

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 Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)<sup>35</sup> of the Act and Rule 19b-4(f)(6)<sup>36</sup> thereunder. 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 and Rule 19b-4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>37</sup> because it is substantially similar to order types previously approved or considered by the Commission and as discussed in the Statutory Basis and Burden on Competition sections.<sup>38</sup> Thus, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission.

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

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<sup>35</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 17 CFR 240.19b-4(f)(6).

<sup>38</sup> See supra notes 26, 29, and 34.

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>39</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2020-16 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-2020-16. 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

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<sup>39</sup> 15 U.S.C. 78s(b)(2)(B).

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-IEX-2020-16, 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>40</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>40</sup> 17 CFR 200.30-3(a)(12).