

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91324; File No. SR-IEX-2021-03)

March 15, 2021

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Retail Orders to Trade with Certain Aggressively Priced Displayed Odd Lot Orders

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 March 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 and II 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,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to how Retail orders interact with displayed odd lot orders.

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.

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.

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this proposed rule change is to modify the manner in which Retail orders⁶ interact with displayed odd lot orders, to make it consistent with the manner in which the Exchange otherwise handles displayed odd lot orders.⁷ Specifically, as detailed below, IEX proposes to change the rules regarding Retail orders to allow them to execute against a displayed odd lot order priced more aggressively than the Midpoint Price.⁸

IEX will soon be implementing rule changes that modify the way it handles odd lot orders by allowing them to be displayed orders and to aggregate to form a protected quotation,⁹

⁶ See IEX Rules 11.190(b)(15) and 11.232(a)(2).

⁷ IEX recently made an immediately effective rule filing to allow displayed odd lot orders on the Exchange. See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

⁸ The term “Midpoint Price” shall mean the midpoint of the NBBO. See IEX Rule 1.160(t). The term “NBBO” shall mean 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).

⁹ IEX currently expects to implement the rule changes to provide for displayed odd lots during the first quarter of 2021. See <https://iextrading.com/alerts/#/137> (January 29, 2021).

which include rule provisions that allow displayed buy (sell) orders to rest on the IEX Order Book¹⁰ at prices more aggressive than both the NBB¹¹ (NBO¹²) and the Midpoint Price.¹³ IEX's displayed odd lot rule filing included several related rule changes to prevent a displayed odd lot order that is a not protected quotation from resulting in a lock or cross of IEX's Order Book.¹⁴ Specifically, IEX adjusted its non-displayed price sliding rules to adjust the price of non-displayed orders that would otherwise be locked or crossed by a displayed odd lot order, and changed its order execution rules to allow a displayed order previously subject to price sliding to match with a contra-side displayed odd lot order that the original order would have locked or crossed upon a subsequent repricing.¹⁵

IEX has identified an additional circumstance in which a displayed unprotected odd lot order could result in a suboptimal trading impact. Specifically, a displayed unprotected odd lot order that is resting at a price more aggressive than the Midpoint Price (i.e. above the Midpoint Price in the case of a buy order and below the Midpoint Price in the case of a sell order) would effectively block a Retail order's access to orders resting at the Midpoint Price. Thus, IEX now proposes to make an analogous change to allow Retail orders to interact with displayed odd lot orders priced more aggressively than the Midpoint Price.

¹⁰ See IEX Rule 1.160(p).

¹¹ See IEX Rule 1.160(u).

¹² See IEX Rule 1.160(u).

¹³ See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

¹⁴ See supra note 13 at 6689-90.

¹⁵ See supra note 13 at 6689-90.

IEX introduced its Retail Price Improvement Program (“Retail Program”) in 2019.¹⁶ IEX’s Retail Program is designed to provide retail investors with meaningful price improvement opportunities by offering price improvement to Retail orders. Only Members¹⁷ that the Exchange has approved as Retail Member Organizations (“RMO”)¹⁸ may submit Retail orders to the Exchange on behalf of their retail customers.¹⁹ Retail orders are Discretionary Peg²⁰ or Midpoint Peg²¹ orders with a Time-in-Force of IOC or FOK, and that are only eligible to trade at the Midpoint Price. Restricting Retail orders to only execute at the Midpoint Price was designed to maximize their price improvement opportunities, while recognizing that in 2019, a large portion of IEX’s resting liquidity was non-displayed orders eligible to execute at the Midpoint Price.²²

Because displayed odd lot orders can book at prices more aggressive than the Midpoint Price, but Retail orders can only trade at the Midpoint Price, Retail orders could miss the opportunity to obtain even more price improvement that would be obtained by executing against an aggressively priced displayed odd lot order. By way of example, if the market is \$10.10 by

¹⁶ See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (SEC order approving IEX’s Retail Price Improvement Program).

¹⁷ See IEX Rule 1.160(s).

¹⁸ See IEX Rule 11.232(a)(1).

¹⁹ For a Member to be approved as a RMO, it must complete an application and submit materials reflecting that it either conducts a retail business or routes retail orders on behalf of another broker-dealer. See IEX Rule 11.232(b).

²⁰ See IEX Rule 11.190(b)(10).

²¹ See IEX Rule 11.190(b)(9).

²² See supra note 16.

\$10.20, and IEX has on its Order Book a displayed odd lot order to sell 50 shares at \$10.13 and a non-displayed Midpoint Peg order to sell 100 shares at the Midpoint Price of \$10.15, and IEX receives an incoming Retail order to buy 100 shares; the Retail order would not be able to match with the Midpoint Peg order at \$10.15 because the displayed odd lot order has price priority to the Midpoint Peg order. However, the Retail order also cannot execute against the displayed odd lot order because a Retail order is only eligible to trade at the Midpoint Price. Therefore, the Retail order is not executable under current IEX rules and would be canceled.²³ If the Retail order could trade with the aggressively priced displayed odd lot order, 50 shares would execute with the displayed odd lot order at \$10.13, and the remaining 50 shares would execute with the Midpoint Peg order at \$10.15. Allowing the Retail order to match with the aggressively priced displayed odd lot order would offer greater price improvement for the 50 shares that matched at \$10.13.

Therefore, IEX is proposing to modify IEX Rules 11.232(a)(2) and (e)(2) to provide that Retail orders are only eligible to trade at the Midpoint Price, with the exception that Retail orders can also trade with an aggressively priced displayed odd lot order priced on the far side of the Midpoint Price. In other words, as proposed, a Retail order to sell (buy) can match with any order to buy (sell) at the Midpoint Price or a displayed odd lot order to buy (sell) priced at or between the NBO (NBB) and the Midpoint Price.

IEX notes that this proposed rule change is consistent with the rules of the other exchanges with retail price improvement programs, none of which restrict their retail orders from only executing at the Midpoint Price.²⁴

²³ See IEX Rule 11.230(a) (a non-executable, non-routable order will be canceled).

²⁴ See NYSE Rule 7.44(a)(3); Cboe BYX Rule 11.24 (a)(2); Nasdaq BX Rule

IEX is also proposing a conforming amendment to Rule 11.232(e)(3) to reflect that an aggressively priced displayed odd lot order will execute before any non-displayed Midpoint Price orders. In addition, IEX is proposing to add Example 4 at the end of Rule 11.232, to demonstrate how an aggressively priced displayed odd lot order will trade with a Retail order before the Retail order matches with any non-displayed Midpoint Price orders.

Finally, IEX is proposing to correct two typographical errors: add a missing “\$” in three places in Examples 1, 2, and 3; and correct the reference in Example 3, so it cites IEX Rule 11.220(a)(c)(vii) instead of Rule 11.220(a)(c)(viii).²⁵

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5),²⁷ 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 to allow Retail orders to trade with an aggressively priced displayed odd lot order is consistent with the protection of investors and the public interest because it is designed to increase the opportunities for retail investors to

4702(b)(6)(A).

²⁵ See supra note 13 (renumbering Rule 11.220(a)(c)(viii) as Rule 11.220(a)(c)(vii)).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

obtain price improvement.

Furthermore, as discussed in the Purpose section, IEX believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to further incentivize the entry of additional Retail orders and displayed odd lot orders on IEX by providing the opportunity for Retail orders to obtain greater price improvement and additional execution opportunities against displayed odd lot orders, while offering increased execution opportunities to displayed odd lot orders. Moreover, because displayed odd lots can result from displayed limit orders of more than odd lot size, the Exchange believes that the proposed rule change is also designed to incentivize the entry of displayed limit orders generally by providing such increased execution opportunities to displayed odd lot orders. IEX believes that, to the extent the proposed rule change is successful in incentivizing the entry of additional Retail orders and displayed odd lot and limit orders on IEX it will provide increased liquidity on the Exchange to the benefit of all market participants, thereby supporting the purposes of the Act 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.

Additionally, IEX believes that the proposed corrections to IEX Rule 11.232 further the purposes of the Act because they will provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion of any market participants. Specifically, the proposed typographical fixes will prevent any confusion to market participants about the application of those examples, provide clarity, and reduce any possible confusion to market participants.

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.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, and as discussed in the Statutory Basis section, the proposal is designed to enhance IEX's competitiveness with other markets by further incentivizing the entry of additional displayed odd lot and limit orders on IEX by providing additional execution opportunities for displayed odd lot orders and offering increased price improvement to Retail orders, thereby increasing the overall liquidity profile of the Exchange to the benefit of all market participants. IEX also believes that conforming the Exchange's treatment of Retail orders with that of other exchanges with retail price improvement programs would promote intermarket competition for increasingly sought-after retail investor orders, to the benefit of retail customers in particular, and the market as a whole.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While only Members approved by the Exchange to be RMOs can submit Retail orders to the Exchange, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders. Further, any Member can submit a displayed odd lot or limit order and would therefore benefit if aggressively priced displayed odd lot orders have more opportunities to execute because they can now trade with Retail orders.

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)²⁸ of the Act and Rule 19b-4(f)(6)²⁹ 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.

A proposed rule change filed under Rule 19b-4(f)(6)³⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that IEX can implement the proposed rule change concurrently with implementation of its displayed odd lot rule filing, which is anticipated within the next several weeks. The Exchange has represented that the proposal is substantially similar to the functionality of other exchanges and will provide the opportunity for Retail orders to obtain greater price improvement by allowing them to execute against displayed odd lot orders priced more aggressively than the Midpoint Price. The Exchange further states that waiver of the operative delay will allow it to synchronize the timing for implementation of the proposed rule change with the displayed odd lot rule filing implementation. The Commission believes that

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6)(iii).

waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any novel issues and will allow Retail orders to benefit from more opportunities to receive executions at improved prices. Waiver of the operative delay will allow the Exchange to offer this benefit to investors without undue delay when it implements its new displayed odd lot functionality. For these reasons, the Commission hereby waives the 30-day operative delay.³²

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)³³ 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. Please include File Number SR-IEX-2021-03 on the subject line.

³² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³³ 15 U.S.C. 78s(b)(2)(B).

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-IEEX-2021-03. 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 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-2021-03, 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.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12), (59).