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September 29, 2021

By email to shillmand@sec.gov
David Shillman
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Application for Exemptive Relief Pursuant to Rule 602(d) of Regulation NMS

Dear Mr. Shillman:

Pursuant to Rule 602(d) of Regulation NMS[1] under the Securities Exchange Act of 1934 ("the Act"), Investors Exchange LLC ("IEX" or the "Exchange") respectfully requests that the Securities and Exchange Commission ("Commission") exempt the Exchange from the provisions of Regulation NMS Rule 602 (the "Quote Rule") with respect to its planned dissemination of a Retail Liquidity Identifier ("RLI") containing specified information regarding Retail Liquidity Provider ("RLP")[2] orders pursuant to IEX's Retail Price Improvement Program[3] (the "Retail Program"). The Commission recently approved, pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"), IEX's rule change proposal to provide for such dissemination, and IEX expects to implement the rule change in the coming weeks.[4] In particular, IEX requests that the Commission exempt the Exchange from the requirement of Regulation NMS Rule 602(a) to allow it to disseminate the RLI to advertise the presence of RLP interest without including such interest in the Exchange's quotation[5].

As described below, the Exchange believes that the exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.[6]

Background

In 2019 the Commission approved IEX's Retail Program,[7] which is designed to provide retail investors with meaningful price improvement opportunities through trading at the Midpoint

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[1] 17 CFR 242.602(d).
[2] See IEX Rules 11.232(a)(3) and 11.190(b)(14).
[3] See IEX Rule 11.232 which sets forth the rules governing the Retail Program.
[4] See Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR-IEX-2021-06).
[5] 17 CFR 242.600(b)(75).
[6] 17 CFR 242.602(d).
[7] See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05).

Price[8] or better.[9] On April 1, 2021, the Exchange filed with the Commission a rule change proposal[10] to enhance the Retail Program in four respects for the benefit of retail investors, including to disseminate the RLI. This letter requests exemptive relief with respect to the Quote Rule's potential application to the RLI and the orders it advertises.

IEX's Retail Program

IEX's Retail Program is a simple approach designed to provide retail investors with the opportunity for meaningful price improvement (by executing at the Midpoint Price or better), by attracting counterparty liquidity to the Exchange from Members and their clients seeking to interact with retail liquidity. IEX's Retail Program leverages IEX's market structure to provide enhanced price improvement opportunities for retail customers by incentivizing Members and their clients to provide liquidity to the orders of retail investors, while enabling such investors to obtain materially better price improvement than may otherwise be available, in a way that is mutually beneficial for retail investors and Members providing liquidity.

Recently Approved Changes to IEX's Retail Program

The Commission recently approved amendments to IEX's Retail Program, which are pending implementation by IEX and not yet operative.[11] These amendments are designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement at the Midpoint Price by incentivizing market participants to compete for execution priority to provide such price improvement.

The recently approved amendments include the following: (i) revising the definition of Retail order[12] in IEX Rule 11.190(b)(15) to add that a Retail order may only be the trading interest of a natural person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s);[13] (ii) providing that RLP orders are ranked in Order Book priority at the Midpoint Price in time priority with non-displayed orders priced to execute at the Midpoint Price; (iii) disseminating a liquidity flag called a Retail Liquidity Identifier or RLI through the Exchange's proprietary market data feeds and the appropriate securities information processor when RLP order interest aggregated to form at least one round

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[8] 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).

[9] On March 1, 2021 IEX filed an immediately effective rule change proposal to provide that, in addition to executing at the Midpoint Price, a retail order can execute against a displayed unprotected odd lot order that is resting on the Order Book at a price more aggressive than the Midpoint Price (i.e., above the Midpoint Price in the case of an odd lot buy order and below the Midpoint Price in the case of an odd lot sell order). Executing against such an odd lot order thus provides more price improvement to the retail order than executing at the Midpoint Price. See Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR-IEX-2021-03).

[10] See supra note 4.

[11] See supra note 4.

[12] See IEX Rule 11.190(b)(15).

[13] The existing restrictions applicable to a Retail order, that it must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology, will continue to apply.

lot for a particular security is available in the System[14], provided that the RLP order interest is resting at the Midpoint Price and priced at least $0.001 better than the NBB[15] or NBO[16] ("RLP Interest"); and (iv) amending the definition of RLP orders so such orders can only be midpoint peg orders[17], cannot be Discretionary Peg orders[18], and cannot include a minimum quantity restriction.[19]

These amendments are individually and collectively designed to benefit retail investors by providing enhanced opportunities for such investors to obtain meaningful price improvement. The four amendments also are designed to work in tandem to narrow the pool of market participants eligible to enter Retail orders to those who are less likely to be professional traders, and thereby attract increased contra-side liquidity seeking to trade against and provide meaningful price improvement to such Retail orders, as well as to publicize when there is non-trivial contra-side price improving interest available, and fine tune the requirements applicable to such interest so that it is more deterministic.

As noted above, in order to attract Retail orders to the Retail Program and fuel competition among RLP liquidity providers, the Exchange's recently approved amendments include the dissemination of a liquidity flag called a Retail Liquidity Identifier or RLI. The RLI will reflect the presence but not the explicit price or size of RLP Interest. The purpose of the RLI is to provide relevant market information to Retail Member Organizations ("RMOs")[20] that there is RLP Interest on IEX, thereby incentivizing them to send Retail orders to IEX. Importantly, RLP liquidity providers under the Retail Program will continue to compete for execution priority with earlier arriving non-displayed orders priced to trade at the Midpoint Price.

Discussion

The Exchange appreciates the positive impact that the Quote Rule, as amended, has had on the National Market System.

The obligations of exchanges to disseminate quotations under Regulation NMS Rule 602(a), and those of responsible brokers and dealers to communicate prices and quotation sizes to exchanges under Regulation NMS 602(b), depend on the definition of "bid" or "offer" under Regulation NMS Rule 600(b)(11) which states in pertinent part:

> *Bid* or *offer* means the bid price or the offer price communicated by a member of a national securities exchange…to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of any NMS security, as either principal or agent, but shall not include indications of interest.[21]

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[14] See IEX Rule 1.160(nn).
[15] See IEX Rule 1.160(u).
[16] See id.
[17] See IEX Rule 11.190(b)(9).
[18] See IEX Rule 11.190(b)(10).
[19] See IEX Rule 11.190(b)(11).
[20] See IEX Rule 11.232(a)(1).
[21] 17 C.F.R. 242.600(b)(9).

With respect to price, the Exchange appreciates that because RLP orders are only eligible to trade at the Midpoint Price, dissemination will reflect the availability to incoming marketable Retail orders of price improvement at the Midpoint Price.

The recently approved enhancements to the Retail Program, including the RLI, have the potential to provide better prices for retail investors, a core goal of the National Market System in general and the Quote Rule in particular. The Retail Program is structured so that Retail orders only execute at the Midpoint Price or better, thereby enabling Retail investors to obtain materially better price improvement than may otherwise be available. As set forth in the rule filing to enhance the Retail Program, the planned changes are designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement by providing relevant market information to RMOs that there is RLP Interest on IEX, thereby incentivizing them to send Retail orders to IEX to obtain such price improvement. Further, as noted above, RLP liquidity providers under the Retail Program will continue to compete for execution priority with respect to incoming Retail orders because RLP orders and other orders eligible to trade with Retail orders will compete for execution based on time priority.

First, the Exchange believes that this enhancement of competition to provide meaningful price improvement to Retail orders has the potential to produce better prices for retail investors than the existing internalization arrangements as well as retail programs of other exchanges. The Exchange further believes that dissemination of the RLI will be an important component of the effort to attract liquidity providers and Retail orders to the Retail Program. Given the longstanding nature of many internalization arrangements, the identification of liquidity, including side and at least one round lot, may be necessary to attract the attention of those handling retail flow and lead them to consider becoming RMOs. Moreover, because RLPs must provide meaningful price improvement at the Midpoint Price, and compete to obtain execution priority, the success of the Retail Program will depend on the attraction of Retail orders.

Second, the Retail Program, and in particular the RLI, will add additional transparency concerning liquidity available to retail investors. Current internalization arrangements do not allow for broad-based dissemination of information relating to the availability of retail liquidity. There are, consequently, relatively fewer broker-dealers able to participate in providing contra-side interest than would be potentially available under the Retail Program. The Exchange believes that the Retail Program's market-wide dissemination of a liquidity flag through the appropriate securities information processor and the Exchange's proprietary market data feeds identifying the presence of qualifying RLP orders could result in more market participants competing to provide contra-side trading interest for retail liquidity at the Midpoint Price and consequently improve the prices available to retail investors. Further, as noted above, the Exchange believes that the RLI will also incentivize the entry of incoming Retail orders. The Exchange also notes that several other national securities exchanges offer retail programs that include dissemination of a similar liquidity flag.[22]

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[22] See Cboe BYX Exchange, Inc. Rule 11.24(e); Nasdaq BX, Inc. Rule 4780(e); New York Stock Exchange LLC Rule 7.44(j); and NYSE Arca, Inc. Rule 7.44-E(j). IEX's RLI indicates the presence of liquidity priced to trade at the Midpoint Price, while other exchange retail price improvement programs' retail liquidity indicators indicate the presence of resting liquidity priced a minimum of $0.001 better than the NBB or NBO.

Third, the planned dissemination of the RLI will enhance the ability of the Retail Program to compete with existing bilateral internalization arrangements and retail programs of other exchanges in a manner that is expected to directly benefit retail investors. The Exchange regards the Retail Program as an important but structurally modest effort by the Exchange to attract retail order flow. The RLI will be an important component of the Retail Program's effort to attract liquidity providers and Retail orders to the Retail Program. With more execution choices and more information, brokers handling retail orders will be in a better position to achieve meaningful price improvement for the benefit of their retail clients.

Request for Relief

For the reasons set forth above, the Exchange respectfully requests an exemption pursuant to Regulation NMS Rule 602(d) with respect to the Retail Program's dissemination of an RLI through the appropriate securities information processor and the Exchange's proprietary market data feeds or otherwise with respect to the RLP Orders advertised by the RLI to allow it to disseminate the RLI to advertise the presence of RLP interest without including such interest in the Exchange's quotation.

Thank you in advance for your consideration of this request.

Best regards,

Claudia Crowley

cc: Richard Holley III
        Division of Trading and Markets
        Securities and Exchange Commission