

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85036; File No. SR-IEX-2019-01)

February 1, 2019

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reject Market Orders with a Time-in-Force of DAY that are Entered in the Pre-Market Session for Non-IEX-Listed Securities

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 January 28, 2019, 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,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to reject market orders with a time-in-force<sup>6</sup> of DAY that are entered in the Pre-Market Session<sup>7</sup> for non-IEX-listed securities, including for the Opening Process for non-IEX-listed securities pursuant to Rule 11.231 (the “Opening Process”). 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 [sic] 240.19b-4.

<sup>6</sup> See Rule 11.190(c).

<sup>7</sup> See Rule 1.160(z).

controversial” under Section 19(b)(3)(A) of the Act<sup>8</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>9</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 reject market orders with a time-in-force of DAY that are entered in the Pre-Market Session for non-IEX-listed securities, including for the Opening Process. 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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4.

“Opening Process”).<sup>10</sup>

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<sup>11</sup> (i.e., orders on the “Cross Book”) is executed at a single price. Currently, prior to the beginning of Regular Market Hours,<sup>12</sup> Users that wish to participate in the Opening Process may enter limit, non-routable market, and pegged orders designated with a time-in-force of DAY and limit orders designated with a time-in-force of GTX, which queue in the System and are eligible for execution in the Opening Process (i.e., 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>13</sup>

The Exchange proposes to reject market orders with a time-in-force of DAY that are entered in the Pre-Market Session for non-IEX-listed securities, including for the Opening Process. Specifically, as proposed, market orders marked DAY submitted before the open of the Regular Market Session would be rejected for non-IEX-listed securities, but will be queued by

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<sup>10</sup> See Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017).

<sup>11</sup> See Rule 1.160(gg).

<sup>12</sup> See Rule 1.160(gg).

<sup>13</sup> See Rule 11.220(a)(2). See also Rule 11.231(a)(1).

the System until the Opening Auction (or Halt Auction, as applicable) for IEX-listed securities pursuant to IEX Rule 11.350,<sup>14</sup> except market orders marked DAY that are designated to route pursuant to Rule 11.230(c).<sup>15</sup> The Exchange is not proposing any further changes to the handling or functional behavior of market orders. Finally, the Exchange is proposing a conforming change to Rule 11.220 (Priority of Orders) to reflect that, as proposed, market orders will not be eligible for execution in the Opening Process for non IEX-listed securities.

## 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.

Specifically, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest in that it is designed to prevent market participants from entering market orders with a time-in-force of DAY on IEX instead of the primary listing market, that could cause an opening match price on IEX that significantly deviates from the current market for the security.<sup>18</sup>

Based on informal conversations with various market participants, the Exchange

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<sup>14</sup> See Rule 11.350(a)(1)(A)(iii).

<sup>15</sup> See Rule 11.190(a)(2)(E)(iii).

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

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

<sup>18</sup> The Exchange notes as well that it does not accept Market-On-Open orders for the Opening Process because such orders could have a similar impact.

understands that market orders with a time-in-force of DAY are often entered during the pre-market session by market participants to interact in opening auctions on the listing exchange for listed securities. Accordingly, IEX and other listing exchange [sic] accept market orders with a time-in-force of DAY for such auctions.<sup>19</sup> While the IEX Opening Process is designed to provide an opportunity to match buy and sell orders at a price that is reflective of market conditions for the security, the Exchange also appreciates the important goal of aggregating liquidity in the opening auction (as well as the closing auction) on the listing exchange to facilitate price discovery for the auction. Therefore, the Exchange believes that restricting market participants from entering market orders with a time-in-force of DAY in non-IEX-listed securities may facilitate the aggregation of liquidity in the primary market opening auction and enhance market-wide price discovery, consistent with the protection of investors and the public interest. In addition, the Exchange believes the proposed change would not significantly impact the protection of investors or the public interest because prior to offering the Opening Process for non-IEX-listed securities,<sup>20</sup> the Exchange rejected market orders with a time-in-force of DAY that were entered before the Regular Market Session, and such interest was not eligible for the prior opening mechanism. Thus, the proposed rule change does not present any new or novel issues not already considered by the Commission.

Lastly, the Exchange believes the proposed conforming change to Rule 11.220 is consistent with the protection of investors and the public interest in that it will make the Exchange's rules more concise and accurate, to the benefit of all market participants.

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<sup>19</sup> See supra note 11 [sic]. See also, e.g., Cboe BZX Exchange, Inc. Rules 11.23(a)(8) and 11.9(b)(7).

<sup>20</sup> See supra note 10.

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

IEEX 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. With respect to intra-market competition, the Exchange notes that the proposed changes will apply to all Members on a fair and equal basis. Furthermore, market participants seeking to interact in the Opening Process may continue to enter other Cross Eligible Orders on fair and equal terms. With respect to inter-market competition, the Exchange believes that the proposed change does not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that rejecting market orders with a time-in-force of DAY to avoid causing an opening match price that deviates from the current market for the security will support, and thereby promote competition between the Exchange's Opening Process and the opening mechanisms offered by other market centers, while avoiding unnecessary fragmentation of order flow intended for the primary market's opening auction.

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 Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup>

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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 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-2019-01 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-2019-01. 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

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<sup>22</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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-2019-01, 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>23</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).