SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94884; File No. SR-IEX-2022-04)

May 10, 2022

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Remove the Midpoint Price Constraint on Non-Displayed Limit Orders and Make Conforming Changes

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 April 29, 2022, 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 the 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] the Exchange is filing with the Commission a proposed rule change to remove the

midpoint price constraint on non-displayed limit orders and make conforming changes to several

rules. The Exchange has designated this rule change as "non-controversial" under Section

19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b-

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[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.

[6]   15 U.S.C. 78s(b)(3)(A).

4(f)(6) thereunder.[7]

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.

II.   <u>Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change</u>

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 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.   <u>Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change</u>

1.   <u>Purpose</u>

Currently, IEX Rule 11.190(h)(2) (Non-Displayed Price Sliding) adjusts the price of any

non-displayed limit order priced more aggressively than the Midpoint Price[8] to be priced at the

Midpoint Price (the "Midpoint Price Constraint"). The Exchange proposes to amend its non-

displayed price sliding rule to allow non-displayed limit orders to be priced more aggressively

than the Midpoint Price. Specifically, the Exchange proposes to amend IEX Rule 11.190(h)(2)

to remove the Midpoint Price Constraint on non-displayed limit orders, thereby allowing non-

displayed limit orders to be priced as aggressively as the contra-side Protected Quotation,[9]

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[7]   17 CFR 240.19b-4.

[8]   <u>See</u> IEX Rule 1.160(t).

[9]   <u>See</u> IEX Rule 1.160(bb).

provided it does not lock IEX's Order Book.[10] Because this rule change should result in there

being more aggressively priced non-displayed liquidity resting on the Exchange, IEX also

proposes to amend its Order Execution Recheck[11] rule to increase the circumstances in which a

resting non-displayed order may be invited by the System[12] to execute against eligible contra-

side liquidity. Additionally, the Exchange proposes to make related changes to IEX Rules

11.190(b) and 11.230(a)(4)(C) to prevent aggressively priced non-displayed limit orders locking

or crossing IEX's displayed Order Book. Finally, the Exchange proposes to make conforming

changes to IEX Rules 11.190, 11.220, 11.230, 11.231, 11.232, and 11.340. This proposal would

align IEX's non-displayed price sliding rules with those of other national securities exchanges

that trade equities, as detailed below.[13]

I.   <u>Midpoint Price Constraint Removal</u>

Currently, IEX restricts non-displayed limit orders such that they cannot be booked and

ranked at a price any more aggressive than the Midpoint Price.[14] Additionally, IEX offers

several order types that constrain an order's price to a price no more aggressive than the

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[10]   <u>See</u> IEX Rule 1.160(p).

[11]   <u>See</u> IEX Rule 11.230(a)(4)(D).

[12]   <u>See</u> IEX Rule 1.160(nn).

[13]   <u>See</u>, <u>e.g.</u>, Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 11.9(g)(4); MIAX PEARL LLC ("MIAX PEARL") Rule 2614(g)(2).

[14]   Currently, a non-displayed limit order can check past the Midpoint Price on entry, but cannot rest at a price more aggressive than the Midpoint Price.

Midpoint Price.[15] Based on informal feedback, IEX understands that a number of Members[16]

would like to be able to post non-displayed orders at prices more aggressive than the Midpoint

Price. The Members also express a preference to have IEX's non-displayed price-sliding

function like that of other equities exchanges, which only reprice non-displayed limit orders to

be equal to the contra-side Protected Quotation when they would otherwise be priced more

aggressively than the contra-side Protected Quotation. In response to this feedback, and with the

understanding that Members will continue to have the option of using one of several order types

that constrain orders to prices no more aggressive than the Midpoint Price, IEX proposes to

remove its Midpoint Price Constraint on non-displayed limit orders.

Specifically, IEX proposes to modify IEX Rule 11.190(h)(2) to remove all references to

the Midpoint Price Constraint, and to introduce text specifying that non-displayed limit orders

can be priced more aggressively than the Midpoint Price (i.e., between the Midpoint Price and

the NBO[17] for bids (buy orders) or between the Midpoint Price and the NBB[18] for offers (sell

orders). If a non-displayed limit order to buy (sell) is priced more aggressively than the NBO

(NBB), IEX will adjust the order's price to the NBO (for bids) or the NBB (for offers).[19]

For example, if the NBBO[20] is $10.00 x $10.10, and IEX receives a non-displayed buy

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15   For example, Midpoint Peg and Retail Liquidity Provider orders rest at the less
      aggressive of the order's limit price or the Midpoint Price, and Discretionary Peg and
      Corporate Discretionary Peg orders rest one minimum price variant less aggressive than
      the National Best Bid (for bids) or National Best Offer (for offers) and exercise discretion
      to the less aggressive of the order's limit price or the Midpoint Price.

16   See IEX Rule 1.160(s).

17   The term "NBO" means the national best offer. See IEX Rule 1.160(u).

18   The term "NBB" means the national best bid. See IEX Rule 1.160(u).

19   This repricing could occur upon order entry, or after the NBBO changes such that the
      order is now priced more aggressively than the contra-side Protected Quotation.

20   The term "NBBO" means the national best bid or offer, as set forth in Rule 600(b) of

order[21] with a limit price of $10.20, the incoming bid will be repriced to the NBO, $10.10, and

execute against any eligible contra-side liquidity on IEX[22] or book at $10.10 if IEX has no

eligible contra-side liquidity (i.e., IEX has no offers resting on its Order Book).[23] However, if the

incoming non-displayed buy order has a minimum quantity instruction[24] ("MQTY") or other

specific condition[25] that prevents it from matching with an order on the IEX Order Book, the

System will reprice the incoming non-displayed buy order to a price one minimum price variant

("MPV")[26] less aggressive than the NBO price if the IEX sell order is displayed at the NBO, or

at the NBO if the IEX sell order is non-displayed.[27]

IEX believes it is appropriate to adjust the price of the non-displayed limit order whose

specific conditions prevent an execution with IEX's Protected Bid or Offer (as applicable) prior

to posting, because the Member who submitted the order with specific conditions chose to

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Regulation NMS under the Act. See IEX Rule 1.160(u).

[21] The example focuses on price sliding of non-displayed limit orders to buy, but the same rules would apply to non-displayed orders to sell.

[22] For purposes of this example, we are treating the orders as "IEX Only" (non-routable) orders. See IEX Rule 11.190(a)(1)(B). If the incoming order was designated as routable, it would first seek to execute against the IEX Order Book and any away markets before booking.

[23] Because the incoming order is non-displayed, it can be priced at the contra-side NBO without locking the away market NBO. See Reg NMS Rule 610(d), 17 CFR 242.610(d).

[24] See IEX Rule 11.190(b)(11). Significantly, only non-displayed orders can have specific conditions such as a Minimum Quantity that could prevent a match. Id.

[25] Any order that cannot be executed due to its specific conditions (but would otherwise be executable against a contra-side order) surrenders its precedence in the Order Book. See IEX Rule 11.220(a)(5). Usually, this issue arises when one or both orders have a MQTY instruction preventing an execution, but there are a few other specific conditions that prevent executions and cause an order to surrender precedence, such as an Offset Peg order being ineligible to trade during a locked market, see IEX Rule 11.190(h)(3)(C)(iii).

[26] See IEX Rule 11.210.

[27] See IEX Rule 11.220(a)(5).

reduce the number of situations in which the order could potentially execute. Thus, in the example above, if another non-displayed buy order arrives that is able to execute against the displayed sell order resting at the NBO, an execution will occur consistent with IEX's execution priority rules[28], including the rule that orders that cannot execute due to their specific conditions surrender their precedence.[29]

However, when the resting sell order is non-displayed, and the two orders cannot execute because of a specific condition of one or both orders, IEX believes it is appropriate to allow the two non-displayed orders to book at the same price (the NBO), thereby "locking" the non-displayed Order Book.[30] If a later arriving buy order can execute with the resting non-displayed sell order at the NBO price, it will appropriately execute before the first buy order with specific conditions that prevented an execution, because the order with specific conditions surrenders its precedence.[31]

Therefore, IEX proposes to add text to IEX Rule 11.190(h)(2) specifying that if a repriced non-displayed limit order would lock or cross IEX's Protected Quotation, the order will be adjusted to a price one MPV less aggressive than the NBO (for bids) or the NBB (for offers). IEX notes this functionality is identical to that of The Nasdaq Stock Market LLC ("Nasdaq"), which also reprices non-displayed minimum quantity orders that would otherwise "lock" a contra-side displayed order that does not meet its specific conditions to a price one MPV less

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[28]   Orders execute in price, display, time priority, so the incoming bid, which would be priced at $10.10 has priority over the bid with specific conditions resting at $10.09. See IEX Rule 11.220(a)(2).

[29]   See IEX Rule 11.220(a)(5).

[30]   IEX has always permitted non-displayed orders to lock on its non-displayed Order Book when a specific condition of one or both orders prevents an execution. See IEX 11.230(a)(4)(C).

[31]   See IEX Rule 11.220(a)(5).

aggressive than the price of the contra-side order.[32] Similarly, pursuant to Nasdaq rules, a non-displayed minimum quantity order can lock a contra-side non-displayed order priced at the Protected Quotation, because the order with specific conditions will surrender precedence to incoming orders that can execute against the contra-side order resting at the "locking" price.[33] Additionally, other exchanges, such as MIAX PEARL, will not allow minimum quantity orders to trade at a price above (below) any sell (buy) displayed orders that are priced below (above) the price of the minimum quantity order.[34] MIAX PEARL will only execute a non-displayed minimum quantity order that would otherwise "lock" a contra-side displayed order that does not meet its specific conditions at a price ½ MPV less aggressive than the contra-side displayed order.[35]

Example 1 demonstrates how, as proposed, IEX's non-displayed price sliding rules will work:

Example 1

- NBBO for a stock is $10.10 x $10.20. IEX has no displayed quote.

- Order A, a displayed order to buy 100 shares with a limit price of $10.09 arrives and is booked at $10.09, thereby becoming IEX's Protected Best Bid.

- Order B, a displayed order to sell 100 shares with a limit price of $10.21 arrives and is booked at $10.21, thereby becoming IEX's Protected Best Offer.

- IEX's PBBO for the stock is now $10.09 x $10.21.

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[32]   See Nasdaq Rule 4703(e).

[33]   See Nasdaq Rule 4703(e); see also Nasdaq Rule 4702(b)(3)(A) (allowing non-displayed orders to book at the price of an away market Protected Quotation).

[34]   See MIAX PEARL Rule 2614(c)(7)(B)(iii).

[35]   See MIAX PEARL Rules 2617(a)(4)(C) and (D). In the same situation, IEX is proposing to re-price the non-displayed order to a price one (1) MPV less aggressive than the contra-side displayed order, which IEX believes is a minor distinction from MIAX PEARL's ½ MPV approach.

- Order C, a non-displayed order to buy 300 shares with a limit price of $10.30 and a minimum quantity[36] of 300 shares arrives.[37]

- Order C is repriced by the System to $10.20, which is the NBO.

- The NBBO changes to $10.10 x $10.21. Order B, which is IEX's Best Offer, is now equal to the NBO.

- Order C remains priced at $10.20, a price one MPV less aggressive than IEX's contra-side Protected Quotation of $10.21.

- Order D, a displayed order to sell 100 shares with a limit price of $10.20 arrives. Order C and Order D do not match because Order D does not satisfy Order C's minimum quantity requirements.

- Order D becomes the NBO, and the NBBO moves to $10.10 x $10.20.

- Order C is repriced to $10.19, a price one MPV less aggressive than IEX's contra-side Protected Quotation of $10.20.

As noted above and discussed in the Statutory Basis section below, these proposed changes would align IEX's non-displayed price sliding rules with those of the other equities exchanges.

II.   Impact of Midpoint Price Constraint Removal on Specific Order Types

As discussed above, this rule proposal impacts the price sliding behavior of non-displayed limit orders, including (i) non-displayed Discretionary Limit ("D-Limit")[38] orders; (ii) non-displayed portions of Reserve[39] orders, and (iii) non-displayed portions of D-Limit Reserve[40] orders, which will be able to rest and trade at prices up to the contra-side away market Protected Quotation. Additionally, as set forth below, this proposed rule change impacts the

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[36]   See IEX Rule 11.190(b)(11).

[37]   The example focuses on price sliding of non-displayed limit orders to buy, but the same rules would apply to non-displayed orders to sell.

[38]   See IEX Rule 11.190(b)(7).

[39]   See IEX Rule 11.190(b)(2)(B).

[40]   See IEX Rule 11.190(b)(2)(B).

pricing and functionality of Offset Peg[41] and Primary Peg[42] orders, respectively.

Specifically, IEX proposes to amend IEX Rule 11.190(b)(13), describing Offset Peg orders, to allow them to be priced as aggressively as the contra-side Protected Quotation, dependent upon the limit price plus the offset amount. Currently, Offset Peg orders cannot be priced more aggressively than the Midpoint Price.[43] IEX is proposing to allow Offset Peg orders to rest at prices as aggressive as the contra-side Protected Quotation, irrespective of the Midpoint Price. Therefore, IEX proposes to amend IEX Rules 11.190(b)(13) to reflect the new offset functionality. Additionally, because Offset Peg orders will no longer rest or execute at the Midpoint Price if it is a sub-penny Midpoint Price[44], IEX proposes to amend IEX Rule 11.190(a)(3) (Pegged Order) to reflect that Offset Peg orders cannot execute in sub-penny increments.

This rule filing also impacts Primary Peg orders, which currently book at a price one MPV less aggressive than the NBB (for bids) or NBO (for offers) and during periods of quote stability[45] can exercise discretion up to the NBB/NBO for bids/offers. Primary Peg orders are not currently eligible for Book Recheck because the Midpoint Price Constraint means there will not be any eligible non-displayed contra-side liquidity on the Order Book resting at a price

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[41]   See IEX Rule 11.190(b)(13).

[42]   See IEX Rule 11.190(b)(8).

[43]   Currently, if the offset amount plus the limit price would result in a price more aggressive than the Midpoint Price, the Offset Peg would be priced at the Midpoint Price.

[44]   Depending upon the difference between the NBB and NBO, the Midpoint Price for any execution over $1.00 per share can be a whole penny or a sub-penny price (i.e., if the NBB is $10.01 and NBO is $10.05, the Midpoint Price is a sub-penny price, $10.025. But if the NBB is $10.01 and the NBO is $10.06, the Midpoint Price is a whole penny price, $10.03).

[45]   See IEX Rules 11.190(b)(8)(K) and 11.190(g).

aggressive enough to match the Primary Peg. And currently, Primary Peg orders cannot have a

TIF of IOC or FOK, because the only types of orders Primary Pegs could match with upon entry

are non-displayed odd lots priced at the contra-side Protected Quotation. Because, as proposed,

non-displayed orders will be able to rest at the contra-side Protected Quotation, there is a greater

chance a Primary Peg order could execute upon entry. Therefore, IEX proposes to amend IEX

Rules 11.190(a)(3) and 11.190(b)(8) to allow Primary Pegs to be submitted with any TIF.

Notwithstanding that IEX is proposing to remove the Midpoint Price Constraint, there are

still several order types that Members seeking a Midpoint Price execution can use. Specifically,

Midpoint Peg[46] orders (including Retail Liquidity Provider[47] orders) and Discretionary Peg[48]

orders (including Corporate Discretionary Peg[49] orders), will continue to allow Members to

submit orders that will execute at prices no more aggressive than the Midpoint Price.

III.   Expansion of Book Recheck Opportunities

Currently, all non-displayed orders, other than Primary Peg[50] orders, are eligible to be

invited by the System to become active and check the Order Book for contra-side liquidity upon

a change to the Order Book or NBBO, or as part of the processing of inbound messages ("Book

Recheck" or "Recheck").[51]   Book Recheck allows resting orders to trade against other orders on

the Order Book that were ineligible for execution, or did not satisfy the order's conditions (i.e.,

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[46]   See IEX Rule 11.190(b)(9).

[47]   See IEX Rule 11.190(b)(14).

[48]   See IEX Rule 11.190(b)(10).

[49]   See IEX Rule 11.190(b)(16).

[50]   As discussed above, Primary Peg orders are not currently eligible for Book Recheck
         because the Midpoint Price Constraint means there will not be any eligible non-displayed
         contra-side liquidity on the Order Book resting at a price aggressive enough to match the
         Primary Peg.

[51]   See IEX Rule 11.230(a)(4)(D).

minimum quantity) when they were originally booked.[52] Currently, to be eligible for Book

Recheck, orders must be able to execute at a price equal to or more aggressive than the Midpoint

Price.[53] IEX's Book Recheck functionality is consistent with the manner in which other

exchanges allow a resting order to become active if price changes or other circumstances allow

two orders to execute with one another when they previously could not.[54]

As described above, with the proposed removal of the Midpoint Price Constraint, IEX

expects to have non-displayed orders resting on the Order Book that are priced more

aggressively than the Midpoint Price. Therefore, IEX proposes to amend IEX Rule

11.230(a)(4)(D) to clarify that for an order to be eligible for Book Recheck, it must be able to

execute against resting contra-side liquidity, irrespective of if the contra-side order is resting at

the Midpoint Price. IEX also proposes to amend the Book Recheck references in IEX Rule

11.190(b) to align the language (and functionality) with IEX Rule 11.230(a)(4)(D). By way of

example, with this proposed change, a resting non-displayed bid priced at $10.03 with a NBBO

of $10.00 x $10.10 would be eligible to Recheck against a resting sell order (either a displayed

odd lot or a non-displayed order) with a limit price equal to or more aggressive than $10.03.

As a result of this rule change, non-displayed limit orders will be allowed to rest at the

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52   See IEX Rule 11.230(a)(4)(D).

53   See IEX Rule 11.230(a)(4)(D)(ii).

54   See New York Stock Exchange ("NYSE") Rules 7.37(b)(8) and (9) (Resting orders that
        are repriced and become marketable against contra-side orders on the order book will
        trade consistent with their ranking, and resting orders on both sides of market that reprice
        and become marketable against one another will trade consistent with their ranking); see
        also MIAX PEARL Rule 1901(a) (resting orders may become "Aggressing" orders if the
        PBBO or NBBO is updated, in which case the Aggressing order will check the order
        book for marketable contra-side liquidity); Nasdaq Rule 4702(a) (whenever an order
        receives a new timestamp, including if it was repriced, it is treated by Nasdaq as a new,
        active order).

contra-side Protected Quotation, which means there can now be circumstances when a resting Primary Peg order could execute against resting contra-side liquidity. Therefore, IEX also proposes to amend the Book Recheck rule to remove the language excluding Primary Peg orders from Book Recheck eligibility and amend the Primary Peg order definition to state they are eligible for Book Recheck.

IV. Minimum Quantity Order Changes

As described above, orders with specific conditions, such as MQTY orders, might not always be able to execute against contra-side liquidity with which they would otherwise match because of the Minimum Quantity order's specific conditions.[55] Therefore, as discussed above, IEX proposes to amend IEX Rule 11.190(h)(2) to adjust the price of a minimum quantity order in such a circumstance to a price one MPV less aggressive than the contra-side Protected Quotation when the Exchange's Protected Quotation is equal to the NBBO. IEX also proposes a conforming change to amend IEX Rule 11.190(b)(11), governing MQTY orders, by adding a paragraph reflecting that the new repricing functionality in IEX Rule 11.190(h)(2) applies when an order's minimum quantity prevents it from executing with an order resting at the contra-side Protected Quotation. Specifically, IEX proposes to add subparagraph (G)(iii)(c) to IEX Rule 11.190(b)(11) specify that an incoming MQTY order that would otherwise be executable against a resting non-displayed order but for the MQTY order's specific conditions will be booked and ranked by the System at the less aggressive of the incoming MQTY order's limit price, if any, or the contra-side protected quotation (i.e. the NBO for buy orders and NBB for sell orders) unless the Exchange's Protected Bid (for offers) or Protected Offer (for bids) is equal to the current

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[55]   This scenario would not arise if the contra-side order were a displayed order because displayed orders cannot include a minimum quantity and would execute against any eligible contra-side order.

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NBB (for offers) or current NBO (for bids), in which case the incoming MQTY order is booked and ranked on the Order Book non-displayed one (1) MPV below the current NBO (for bids) or one (1) MPV above the current NBB (for offers).

Additionally, IEX proposes to add subparagraph (G)(iv)(b) to IEX Rule 11.190(b)(11) to specify what happens when two MQTY orders cannot match because of at least one of the order's specific conditions. The proposed new subparagraph specifies that in this situation, the incoming MQTY order would be booked and ranked by the System at the less aggressive of its limit price, if any, or the contra-side Protected Quotation (i.e., the NBO for buy orders and NBB for sell orders). However, if the Exchange's Protected Bid (for offers) or Protected Offer (for bids) is equal to the current NBB (for offers) or current NBO (for bids), the incoming MQTY order would be booked and ranked on the Order Book non-displayed one (1) MPV below the current NBO (for bids) or one (1) MPV above the current NBB (for offers), as set forth in IEX Rule 11.190(h)(2). As proposed, this functionality could result in a "crossed" non-displayed Order Book, as reflected in Example 2, below. Therefore, the Exchange proposes to amend IEX Rule 11.230(a)(4)(C) to remove the last sentence, which reads "Lastly, orders are never permitted to post non-displayed nor rest non-displayed on the Order Book at prices that cross contra-side liquidity."

Example 2

- NBBO for a stock is $10.00 x $10.10. IEX has no displayed orders resting on the Order Book.

- Order A, a non-displayed order to sell 10,000 shares with a limit price of $10.08 and a MQTY of 3,000 shares arrives and is booked at $10.08.

- Order B, a non-displayed order to buy 2,000 shares with a limit price of $10.11 and a MQTY of 500 shares arrives.

- Order B does not satisfy Order A's MQTY, so the two orders do not match.

- Order B books at $10.10, the contra-side Protected Quotation, because it is able to rest at the contra-side Protected Quotation so long as IEX does not have a Protected Quotation priced at the NBO.

- IEX's non-displayed Order Book is crossed at $10.10 x $10.08.

IEX notes that the manner in which it proposes to allow two MQTY orders to cross IEX's non-displayed Order Book is the same approach taken by other exchanges. For example, MEMX LLC ("MEMX") allows orders with minimum execution quantities to create a dark order book cross,[56] and MIAX PEARL allows its non-displayed order book to be internally locked or crossed, in the same manner IEX is proposing.[57]

V.   Related Changes to the Retail Price Improvement Program

IEX's Retail Price Improvement Program[58] currently allows a Retail[59] order to trade with a contra-side order resting at the Midpoint Price, or with an aggressively priced displayed odd lot order priced between the Midpoint Price and the contra-side Protected Quotation.[60] Because this proposed rule change will allow non-displayed orders to also be priced between the Midpoint Price and the contra-side Protected Quotation, IEX proposes to amend IEX Rule 11.232 to allow Retail orders to interact with any order priced between the Midpoint Price and the contra-side Protected Quotation. Specifically, IEX proposes to amend IEX Rules 11.232(a)(2) and 11.232(e)(2) to reflect this change.

Additionally, IEX proposes to amend Rule 11.232(e)(3) regarding Retail order priority, by adding subparagraph (iii), which states that non-displayed orders priced more aggressively

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[56]   See MEMX Rule 11.6(f)

[57]   See MIAX PEARL Rule 2614(c)(7)(B)(iv).

[58]   See IEX Rule 11.232.

[59]   See IEX Rules 11.190(b)(15) and 11.232(a)(2).

[60]   See IEX Rule 11.232(a)(2).

than the Midpoint Price will have price priority over orders resting at the Midpoint Price because of their more aggressive price.[61] IEX also proposes to renumber subparagraph (iii) to (iv) to reflect the insertion of the new subparagraph (iii).

Finally, IEX proposes to add a new Example 6, to demonstrate how an aggressively priced non-displayed limit order will have execution priority over orders priced to execute at the Midpoint Price.

VI.   Conforming Changes Caused by Midpoint Price Constraint Removal

IEX also proposes several conforming changes to other IEX rules. Specifically, IEX proposes to make the following conforming changes:

- Amend IEX Rule 11.190(a)(3) (Pegged Order) to remove the text stating that an Offset Peg order may be executed in sub-pennies if necessary to obtain a Midpoint Price. As noted below, Offset Peg orders would no longer be constrained by the Midpoint Price, and therefore will no longer execute in sub-pennies.[62]

- Amend IEX Rule 11.190(a)(3)(A) to remove the text stating that Primary Peg orders may not have a TIF of IOC or FOK. As discussed above, because the removal of the Midpoint Price Constraint means the IEX Order Book could have resting orders priced at the contra-side Protected Quotation, it is now possible for a Primary Peg order to execute upon entry, and therefore IEX proposes to allow Primary Peg orders to be submitted with a TIF of IOC or FOK. Relatedly, IEX proposes to amend subparagraph (E) of the same rule to remove the text saying that Primary Peg orders submitted with a TIF of IOC or FOK will be rejected on entry.

- Amend IEX Rule 11.190(b)(2) (Reserve Order) and the accompanying Supplementary Material to remove references to the Midpoint Price Constraint and replace them with references to the non-displayed price sliding rule. IEX also proposes to correct a typographical error by inserting a "B" into the last word of the sentence that reads: "[f]or example, NBBO is $10.01 x $10.02, and IEX does

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[61]   An aggressively priced displayed odd lot order resting at the same price as the aggressively priced non-displayed limit order will have execution priority over the non-displayed limit order.

[62]   As set forth in IEX Rule 11.210, for securities that execute at sub-dollar prices (i.e., the order is priced less than $1.00 per share), the minimum price variation is $0.0001. Therefore, sub-penny executions can still occur for any sub-dollar executions.

not have any orders resting at the NBO," which will now end by saying "at the NBBO." Further, IEX proposes to modify the example in Supplementary Material .01 (Reserve Orders) to describe a displayed odd lot reserve order with 50 shares displayed and 950 shares in reserve, to demonstrate how the displayed and non-displayed portions of a reserve order can be booked at different prices. Therefore, IEX proposes to end the example by changing the non-displayed portion's resting price from $10.015 (the Midpoint Price) to $10.02, the NBO. Additionally, IEX proposes to reorder the paragraphs in the Supplementary Material about reserve orders such that the paragraph about D-Limit reserve orders is the last paragraph.

- Amend IEX Rule 11.190(b)(3) (Non-Displayed Order) to remove the text stating that Primary Peg orders are not eligible for Book Recheck. As discussed above, these changes are proposed because Primary Peg orders have a higher likelihood of executing on entry now that non-displayed orders can rest at the contra-side Protected Quote.

- Amend IEX Rule 11.190(b)(8) (Primary Peg Order) to: amend subparagraph (B) to state that a Primary Peg order may have any TIF described in IEX Rule 11.190(a)(3); and remove the text in subparagraph (J) that says Primary Peg orders are not eligible for Book Recheck and add text saying that they are eligible to be invited to Recheck to trade against eligible resting contra-side interest. As discussed above, the TIF changes are proposed because Primary Peg orders have a better likelihood of executing on entry now that non-displayed orders can rest at the contra-side Protected Quote. Additionally, as discussed above, the proposed change to allow Primary Peg orders to Recheck the Order Book conforms to proposed changes to the Book Recheck rule to reflect that orders will no longer only be invited to recheck the Order Book if there is a contra-side order resting at the Midpoint Price.

- Amend IEX Rule 11.190(b)(9) (Midpoint Peg Order) to remove the text in subparagraph (J) that states that Midpoint Peg orders are eligible to be invited to Recheck to trade against interest resting at the Midpoint Price and replace it with text saying they are eligible to be invited to Recheck to trade against eligible resting contra-side interest. As discussed above, this conforms to proposed changes to the Book Recheck rule to reflect that orders will no longer only be invited to recheck the Order Book if there is a contra-side order resting at the Midpoint Price.

- Amend IEX Rule 11.190(b)(10) (Discretionary Peg Order) to remove the text in subparagraph (J) that says Discretionary Peg orders are eligible to be invited to Recheck to trade against interest resting at the Midpoint Price and replace it with text saying they are eligible to be invited to Recheck to trade against eligible resting contra-side interest.   As discussed above, this conforms to proposed changes to the Book Recheck rule to reflect that orders will no longer only be invited to recheck the Order Book if there is a contra-side order resting at the Midpoint Price.

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- Amend IEX Rule 11.190(b)(13) (Offset Peg Order) to remove the text in subparagraph (L) that provides that an Offset Peg order with an offset amount that results in a price more aggressive than the Midpoint Price will have the offset amount reduced so that the order is priced at the Midpoint Price until such time as the full offset amount will not result in the price of the order being more aggressive than the Midpoint Price. IEX further proposes to add text stating that if the offset amount results in a price more aggressive than the contra-side Protected Quotation, the offset amount will be reduced so that the order is booked and ranked on the Order Book non-displayed at the contra-side protected quotation (i.e. the NBO for buy orders and NBB for sell orders), unless the Exchange's Best Bid (for offers) or Best Offer (for bids) is equal to the current NBB (for offers) or current NBO (for bids), in which case the order is booked and ranked on the Order Book non-displayed one (1) MPV below the current NBO (for bids) or one (1) MPV above the current NBB (for offers), as set forth in IEX Rule 11.190(h)(2), until such time as the full offset amount will not result in the price being more aggressive than the contra-side Protected Quotation. Additionally, as discussed above, because Offset Peg orders will no longer be eligible to be priced in sub-pennies, IEX proposes to remove the sentence describing how a sub-penny priced order is rounded up or down.

- Amend Supplementary Material .03 (Minimum Quantity Orders) to specify that the IEX PBBO for the example is $10.01 x $10.03 and modify the example to specify that Order #4 in the example would book at its limit price of $10.02 (removing the text saying it would book at the Midpoint Price). Additionally, IEX proposes to reorder the paragraphs in the Supplementary Material about reserve orders such that the paragraph about D-Limit reserve orders is the last paragraph.

- Amend IEX Rule 11.190(b)(16) (Corporate Discretionary Peg Order) to remove the text in subparagraph (J) that says Corporate Discretionary Peg orders are eligible to be invited to Recheck to trade against interest resting at the Midpoint Price and replace it with text saying they are eligible to be invited to Recheck to trade against eligible resting contra-side interest. As discussed above, this conforms to proposed changes to the Book Recheck rule to reflect that orders will no longer only be invited to recheck the Order Book if there is a contra-side order resting at the Midpoint Price.

- Amend IEX Rule 11.190(h)(3) (Locked and Crossed Markets) to remove all references to the Midpoint Price Constraint and replace them with references to non-displayed price sliding. Additionally, amend IEX Rule 11.190(h)(3)(D)(i) to remove the reference to Offset Peg orders and add Corporate Discretionary Peg orders to the list of order types for which reference to the Midpoint Price is relevant.

- Amend IEX Rule 11.190(h)(4) (Short Sale Price Sliding) to remove subparagraph (E) and amend subparagraph (C) to remove references to displayed or displayable orders and the Permitted Display Price, and add a sentence saying that "[i]n the

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event the NBB changes such that the price of a non-displayed Order subject to Rule 201 of Regulation SHO would lock or cross the NBB, the order will receive a new timestamp, and will be re-priced by the System at the Permitted Price." These changes reflect the fact that without the Midpoint Price Constraint, IEX's short sale price sliding rules no longer need to distinguish between a "Permitted Display Price" and a "Permitted Price."

- Amend IEX Rule 11.220 (Priority of Orders) Supplementary Material .01 (Surrendering Precedence) to change the order #4 in the example to a midpoint peg order, so that the example will continue to demonstrate how MQTY orders booked at the Midpoint Price surrender precedence if their specific conditions prevent an execution.

- Amend IEX Rule 11.230(a)(4)(C) (Order Execution) to replace references to the Midpoint Price with references to contra-side Protected Quotation (i.e., the NBB or NBO), modify the first sentence of the subparagraph to specify that orders are permitted to post and rest non-displayed on the Order Book at prices that lock the protected quotation of an away market, so long as IEX does not have a protected quotation at the same price, and, as discussed above, delete the last sentence of the subparagraph that states that orders are never permitted to post non-displayed nor rest non-displayed on the Order Book at prices that cross contra-side liquidity.

- Amend IEX Rule 11.230(a)(4)(D) (Book Recheck) to include Corporate Discretionary Pegs in the list of orders eligible for Book Recheck and update the rule citations accordingly. Renumber subparagraphs (v) and (vi) to (iv) and (v) to reflect the deletion of subparagraph (iv), which said Primary Peg orders are not eligible for Book Recheck) as described above. And amend IEX Rule 11.230(a)(4)(D) Supplementary Material .01 to modify the example to reflect that a non-displayed limit order would be booked at its limit price of $10.02, not the Midpoint Price of $10.015.

- Amend IEX Rule 11.231 (Regular Market Session Opening Process for Non-IEX-Listed Securities) by removing the reference to the Midpoint Price from subparagraph (a)(v) and replacing it with a reference to the contra-side protected quotation (i.e., the NBO for buy orders and NBB for sell orders).

- Amend IEX Rule 11.340 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) to remove the reference to the Midpoint Price Constraint in subparagraph (d)(4)(D)(ii) and replace it with a reference to the non-displayed price sliding rules set forth in IEX Rule 11.190(h)(2).

Implementation

This proposed rule change will be immediately effective upon filing, but subject to the

thirty (30) day operative delay. The Exchange anticipates implementing the rule change within

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ninety (90) days of the effective date and will provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

    2.   <u>Statutory Basis</u>

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,[63] in general, and furthers the objectives of Section 6(b)(5),[64] 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 removing the Midpoint Price Constraint for non-displayed limit orders is consistent with the protection of investors and the public interest because it is designed to incentivize the entry of more aggressively priced non-displayed limit orders, because it will allow Members to submit orders that are more likely to post at their instructed limit price, as opposed to being limited to posting no higher than the Midpoint Price. And these orders resting between the Midpoint Price and the contra-side Protected Quotation will trade before any orders resting at the Midpoint Price, which would enhance the aggressively priced orders' execution opportunities. Conversely, any contra-side orders that match with these aggressively priced non-displayed limit orders will benefit by the ability to obtain more price improvement than if they had executed at the Midpoint Price. Thus, IEX believes that allowing Members more control over the pricing of their non-displayed orders should both incentivize the

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[63]   15 U.S.C. 78f(b).

[64]   15 U.S.C. 78f(b)(5).

submission of more orders to IEX (improving the overall liquidity profile of IEX) and offer more potential price improvement opportunities, to the benefit of all market participants.

The Exchange further believes that removing the Midpoint Price Constraint and modeling its non-displayed price sliding rule on those of other equity exchanges is consistent with the Act because such treatment is designed to remove impediments to and perfect the mechanism of a free and open market and national market system by conforming IEX's treatment of non-displayed limit orders with the other equities exchanges.[65]

In addition, since this proposed rule change would make IEX's non-displayed price sliding rule consistent with that of the other equities exchanges, IEX believes that it will promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in facilitating securities transactions because market participants will no longer have to potentially adjust their order routing strategies or trading algorithms to reflect that non-displayed limit orders are never allowed to be priced more aggressively than the Midpoint Price.

The Exchange further believes that modifying its Book Recheck functionality and Retail Price Improvement program are consistent with the protection of investors and the public interest because the rule change is designed to increase the opportunities for eligible orders to execute on the Exchange, which inures to the benefit of all market participants who send orders to the Exchange.

As discussed in the Purpose Section, each of these proposed changes is consistent with rules of other equities exchanges. Specifically:

- As proposed, IEX will slide the price of a non-displayed limit order priced more aggressively than the contra-side Protected Quotation to the price of the contra-side Protected Question. Cboe BZX Rule 11.9(g)(4), Nasdaq Rule 4702(b)(3)(A),

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[65]   See supra note 13.

and MIAX PEARL Rule 2614(g)(2) provide for the same functionality.[66]

- As proposed, IEX will slide the price of a non-displayed order that fails to match with a contra-side order because of the order's special conditions to a price one MPV less aggressive than the contra-side order. Nasdaq Rule 4703(e) provides for the same functionality.[67] And MIAX PEARL Rules 2617(a)(4)(C) and (D) provide for very similar functionality, with the only distinction being that MIAX PEARL allows the minimum quantity order that to trade at a price ½ MPV less aggressive than the price of the contra-side order against which it would match but for the minimum quantity instruction.[68]

- As proposed, IEX will allow resting orders to become active and check the Order Book if they become marketable against contra-side liquidity resting on the Order Book. NYSE Rules 7.37(b)(8) and (9), Nasdaq Rule 4702(a), and MIAX PEARL Rule 1901(a) provide for the same functionality.[69]

- As proposed, IEX will allow non-displayed order with specific conditions that prevent an execution against a contra-side order that also has specific conditions to cross on the non-displayed Order Book. MEMX Rule 11.6(f) and MIAX PEARL Rule 2614(c)(7)(B)(iv) provide for the same functionality.[70]

Overall, while the proposed rule change mirrors the functionality of several exchanges, IEX notes that the MIAX PEARL and Nasdaq rules are the most substantially similar to IEX's proposal. Specifically, IEX's non-displayed price sliding rule proposal mirrors that of MIAX PEARL with the sole exception that MIAX PEARL will reprice a non-displayed order that cannot match with a contra-side order because of the non-displayed order's minimum quantity at a price ½ of an MPV less aggressive than the contra-side order, while IEX proposes to rank the order at a price one MPV away from the price of the contra-side order. Further, Nasdaq's non-displayed price sliding rules mirror this proposal with the exception that Nasdaq does not explicitly state that it will allow two non-displayed minimum quantity orders to cross each other

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[66]   See supra note 13.

[67]   See supra note 32.

[68]   See supra note 35.

[69]   See supra note 54.

[70]   See supra notes 56 and 57.

on the non-displayed order book, while IEX's rules explicitly permit such a cross.[71] Also, neither

MIAX PEARL nor Nasdaq use identical terminology (e.g., descriptions of how resting orders

can become active and check the order book for contra-side liquidity rather than use of the term

"recheck" used in IEX rules).

IEX does not believe that these differences raise any new or novel issues, but merely

reflect minor implementation differences. Both MIAX PEARL and IEX (as proposed) reprice a

non-displayed order that cannot match with a contra-side order because of a minimum quantity,

and it appears that both Nasdaq and IEX will allow two minimum quantity orders to cross each

other on the non-displayed order book. Therefore, IEX does not believe that this proposal raises

any new or novel issues that have not already been considered by the Commission.

Finally, IEX believes that the proposed conforming changes and typographical

corrections further the purposes of the Act because they provide greater clarity and consistency

to the IEX Rule Book thereby reducing the potential for confusion by 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, the proposal is designed to enhance IEX's competitiveness with other

markets by adopting rules providing for more prices at which non-displayed limit orders can

execute or rest on the exchange and allowing for more circumstances in which orders eligible for

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[71]　　IEX notes that Nasdaq's rules, while not explicit, appear to allow a crossed non-displayed order book in this particular situation.

Recheck or Retail orders will be able to interact with these aggressively priced non-displayed limit orders to the benefit of all market participants.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition because it will apply to all Members in the same manner. All Members are eligible to enter non-displayed limit orders and, as discussed in the Purpose section, all Members seeking a Midpoint Price may continue to use Discretionary Peg and Midpoint Peg orders which will not execute at a price more aggressive than the Midpoint Price. Moreover, the proposal would provide potential benefits to all Members to the extent that there is more liquidity available on IEX as a result of the ability to book non-displayed limit orders at more aggressive prices. The proposal is intended to incentivize the entry of more orders on the Exchange and thereby increase the likelihood of executions on the Exchange, which would benefit all market participants.

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)[72] of the Act and Rule 19b-4(f)(6) thereunder.[73]

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[72]   15 U.S.C. 78s(b)(3)(A).

[73]   17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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

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 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 email to rule-comments@sec.gov. Please include File Number SR-IEX-2022-04 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-2022-04. This file number should be included in the subject line if email 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

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.

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 will also 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-2022-04 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.[74]

J. Matthew DeLesDernier
Assistant Secretary

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[74] 17 CFR 200.30-3(a)(12).