

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95463; File No. SR-IEX-2022-05)

August 10, 2022

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add a New Order Type that Pegs to the Contra-side Primary Quote, with the Option of Using a Passive Offset Amount

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 8, 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, II and III below, which Items have been prepared by the Exchange. 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,³ and Rule 19b-4 thereunder,⁴ IEX is filing with the Commission a proposed rule change to add a new order type (a “Market Peg” order) that pegs to the contra-side primary quote, with the option of using a passive offset amount.⁵ The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ The contra-side primary quote is the national best offer for a buy order or the national best bid for a sell order, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b). See IEX Rule 1.160(u).

⁶ 15 U.S.C. 78s(b)(3)(A).

Rule 19b-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. 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 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

The Exchange proposes to amend IEX Rule 11.190 to add a new Market Peg order type that pegs to the contra-side primary quote⁸, minus (plus) an optional passive⁹ offset amount for buy (sell) orders, as specified by the User.¹⁰ In addition, the Exchange proposes two conforming amendments to IEX Rules Rule 11.190(a)(3) and 11.190(h)(3).

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

⁷ 17 CFR 240.19b-4.

⁸ See supra note 5.

⁹ A passive offset is a negative number for buy orders and a positive number for sell orders, thereby making the order's price less aggressive than the contra-side primary quote.

¹⁰ See IEX Rule 1.160(qq).

Discretionary Peg, and Offset Peg¹¹ – each of which are non-displayed orders that upon entry into the System¹² and while resting on the Order Book¹³, are pegged to a reference price based on the national best bid and offer (“NBBO”)¹⁴ and the price of the order is automatically adjusted by the System in response to changes in the NBBO.¹⁵

The Exchange now proposes to add a new type of pegged order – a Market Peg order – that is a non-displayed pegged order that upon entry and when posting to the Order Book, has its price automatically adjusted by the System to be equal to and ranked at the less aggressive of the contra-side primary quote (i.e., the NBO¹⁶ for buy orders and NBB¹⁷ for sell orders), minus (plus) an offset amount for buy (sell) orders, if the User opts to submit the order with an offset amount, or the order’s limit price, if the User opts to submit the order with a limit price. If a User submits a Market Peg buy order with a positive offset amount, or a Market Peg sell order with a negative offset amount, the offset amount will be disregarded. While resting on the Order Book, (i) a buy order is automatically adjusted by the System in response to changes in the NBO minus the offset amount up to the order’s limit price, if any; and (ii) a sell order is automatically adjusted by the System in response to changes in the NBB plus the offset amount down to the order’s limit price, if any; and (iii) in locked and crossed markets, are priced to the less

¹¹ IEX has two other order types that are based on the discretionary peg order type: the Retail Liquidity Provider order and the Corporate Discretionary Peg order. See IEX Rule 11.190(b)(14) and (16).

¹² See IEX Rule 1.160(nn).

¹³ See IEX Rule 1.160(p).

¹⁴ See IEX Rule 1.160(u).

¹⁵ See IEX Rule 11.190(h)(2).

¹⁶ See IEX Rule 1.160(u).

¹⁷ See IEX Rule 1.160(u).

aggressive of the locking or crossing price (i.e., the lowest Protected Offer¹⁸ for buy orders and the highest Protected Bid¹⁹ for sell orders).²⁰ Further, a Market Peg order would not be eligible to trade when the market is locked or crossed, either upon order entry or when resting on the Order Book.

Until recently, IEX imposed a “Midpoint Price Constraint” on all non-displayed orders, which prevented those orders from resting at prices between the Midpoint Price²¹ and the contra-side primary quote. The Midpoint Price Constraint meant IEX could not offer an order type that pegged to the contra-side primary quote.

IEX recently modified its non-displayed price sliding rules to allow non-displayed orders to book and rest at the contra-side primary quote based on its understanding that Members²² would like to be able to post non-displayed orders at prices more aggressive than the Midpoint Price.²³ With the removal of the Midpoint Price Constraint, IEX has received informal feedback from Members that they would like the option of pegging an order to the contra-side primary quote -- the most aggressive price at which the order can execute -- to enhance the order’s execution opportunities. IEX understands that Members would also like to have the option of using a passive price offset for their Market Peg orders, which would allow the Member to obtain potential price improvement over the contra-side primary quote, while continuing to rest

¹⁸ See IEX Rule 1.160(bb).

¹⁹ See IEX Rule 1.160(bb).

²⁰ As with all pegged orders, each time the price of a Market Peg order is adjusted by the System it receives a new timestamp, as described in IEX Rule 11.220(a)(4).

²¹ See IEX Rule 1.160(t),

²² See IEX Rule 1.160(s).

²³ See Securities Exchange Act Release No. 94884 (May 10, 2022), 87 FR 29768 (May 16, 2022) (SR-IEX-2022-04).

at an aggressive price with increased execution opportunities.

Accordingly, IEX proposes to add subparagraph (b)(18) to IEX Rule 11.190, to add the Market Peg order. IEX notes that this Market Peg order is based upon its Offset Peg order type²⁴, with two major differences: the Offset Peg order pegs to the primary quote (i.e., the NBB for buy orders and the NBO for sell orders), while the Market Peg order pegs to the contra-side primary quote (i.e., the NBO for buy orders and the NBB for sell orders); and the Offset Peg can be submitted with an aggressive (positive for buy orders/negative for sell orders) or passive (negative for buy orders/positive for sell orders) offset amount, while the Market Peg order can only be submitted with a passive offset amount. Market Peg orders can only have a passive offset because by default they rest at the contra-side primary quote, which is the most aggressive price at which IEX will allow an order to be booked²⁵; therefore, IEX will disregard any aggressive offset amounts attached to a Market Peg order.²⁶

As proposed, a Market Peg order:

- (A) Must be a pegged order.
- (B) May have any TIF described in IEX Rule 11.190(a)(3).
- (C) Is not eligible for routing pursuant to IEX Rule 11.230(b) and (c)(2).
- (D) May not be an inter-market Sweep Order²⁷.
- (E) May be submitted with a limit price or without a limit price (an “unpriced pegged order”).
- (F) Is eligible to trade only during the Regular Market Session. As provided in IEX Rule 11.190(a)(3)(E)(iii), any pegged order marked with a TIF of DAY that is submitted to the System before the opening of the Regular Market Session will be queued by the System until the

²⁴ See IEX Rule 11.190(b)(13).

²⁵ See IEX Rule 11.190(h)(2).

²⁶ For the same reason, if an Offset Peg order’s offset amount would result in the price of the Offset Peg order being more aggressive than the contra-side primary quote, IEX will reduce the offset amount so that the Offset Peg order is booked and ranked at the contra-side protected quotation. See IEX Rule 11.190(b)(13)(L).

²⁷ See IEX Rule 11.190(b)(12).

start of the Regular Market Session; any pegged order that is marked with a TIF other than DAY will be rejected when submitted to the System during the Pre-Market Session. Any pegged order submitted into the System after the closing of the Regular Market Session will be rejected.

- (G) May be a minimum quantity order.²⁸
- (H) Is not eligible to display. Pegged orders are always non-displayed.
- (I) May be an odd lot, round lot, or mixed lot.
- (J) Is eligible to be invited by the System to Recheck the Order Book to trade against eligible resting contra-side interest as described in IEX Rule 11.230(a)(4)(D).
- (K) Is not eligible to trade when the market is locked or crossed.
- (L) May be submitted with an offset amount that is passive compared to the contra-side primary quote. If the offset amount would result in the price of a Market Peg order being more aggressive than the contra-side protected quotation, the offset amount will be disregarded, so that the order is booked and ranked on the Order Book non-displayed at the contra-side protected quotation. If no offset amount is specified, the System will consider the offset amount to be zero.

In addition, the Exchange proposes two conforming amendments to other IEX rules.

First, IEX Rule 11.190(a)(3) would be amended to add Market Peg orders to the list of pegged order types offered by IEX, describing Market Peg orders as an order that pegs to “the NBO (NBB) for buy (sell) orders minus (plus) an offset amount.” Second, IEX Rule 11.190(h) would be amended to describe the manner in which Market Peg orders will operate in locked and crossed markets. Specifically, when the market becomes locked, Market Peg orders, whether resting on or posting to the Order Book, will be priced at the least aggressive of the locking price plus (for sell orders) or minus (for buy orders) an offset amount, or the order’s limit price, if any.²⁹ Further, as proposed, Market Peg orders resting on or posting to the Order Book while the market is crossed are priced at the least aggressive of (1) the crossing price (the lowest Protected Offer for buy orders and the highest Protected Bid for sell orders); (2) the crossing price plus (for

²⁸ See IEX Rule 11.190(b)(11).

²⁹ See proposed changes to IEX Rule 11.190(h)(3)(C)(iii).

sell orders) or minus (for buy orders) an offset amount, or (3) the order's limit price, if any.³⁰

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

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

The manner in which Market Peg orders will operate in locked and crossed markets (as proposed) is identical to the manner in which IEX's Offset Peg orders operate when the market is locked or crossed.³¹ IEX's other pegged order types are eligible to trade in locked or crossed markets, but they are repriced away from the locking and crossing price (except for Midpoint Peg orders in a locked market which continue to be priced at the locking Midpoint Price), which is designed to prevent trading at the locking or crossing price. As with Offset Peg orders, Market Peg orders are designed to enable market participants to trade at or with reference to the contra-side NBB or NBO. When the NBBO is locked or crossed the market is generally considered to be in a transition state with the NBB and/or NBO likely subject to very near-term change. Consequently, the Exchange believes that Market Peg orders should not trade in such circumstances. Further, if a Market Peg order does not have an offset, it cannot be priced away from the locking or crossing price because the contra-side primary quote will be the locking or crossing price. Therefore, IEX proposes to not allow Market Peg orders to trade during locked

³⁰ See proposed changes to IEX Rule 11.190(h)(3)(D)(iii).

³¹ See IEX Rules 11.190(b)(13), 11.190(h)(3)(C)(iii), and 11.190(h)(3)(D)(iii).

or crossed markets. Additionally, IEX believes that the methodology for pricing Market Peg orders during locked and crossed markets is consistent with the Act because it is designed to price such orders at the least aggressive price that is consistent with the terms of the order so as to avoid exacerbating the lock or cross.

The Exchange notes that for many years other national securities exchanges have offered order types that peg to the NBO (for buys) and/or NBB (for sells) plus or minus an offset amount.³² In this regard, the Exchange notes that this proposed rule change is either identical or substantially similar to order types offered by NYSE Arca, Inc. (“Arca”), the Nasdaq Stock Market LLC (“Nasdaq”), and CBOE BZX Exchange, Inc. (“BZX”), each of which offer a non-displayed market pegged order type or attribute that pegs to the primary quotation on the opposite side of the market (i.e., the NBO for a buy order and the NBB for a sell order) with an optional passive offset amount.³³ In particular, this proposed rule change is identical to Arca’s market peg order type, which will also will not trade when the market is locked or crossed.³⁴ The proposed rule change is substantially similar to Nasdaq’s market peg order attribute and BZX’s market peg order type, with the exception that Nasdaq and BZX allow a market peg order to trade when the market is locked or crossed.³⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

³² See, e.g., Securities Exchange Act Release No. 52449 (September 15, 2005), 70 FR 55647 (September 22, 2005) (SR-NASD-2005-107).

³³ See Nasdaq Rule 4703(d), NYSE Arca Rule 7.31-E(h)(1), and Cboe BZX Rule 11.9(c)(8)(B).

³⁴ See Arca Rule 7.31-E(h)(1).

³⁵ See Nasdaq Rule 4703(d) and BZX Rule 11.9(c)(8)(B).

the Act,³⁶ in general, and furthers the objectives of Section 6(b)(5),³⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to increase competition among execution venues by providing an additional pegged order type that market participants can use to trade at the contra-side primary quote, with an optional passive offset, as described in the Purpose section and thereby enable the Exchange to better compete with order types on other national securities exchanges that offer similar features to market participants.

Further, IEX believes that the proposal is consistent with the protection of investors and the public interest in that the Market Peg order type would provide additional flexibility to market participants in their use of pegging orders. As described in the Purpose section, IEX already offers several different types of pegging orders that trade with reference to the primary quote (Offset Peg and Primary Peg), at the Midpoint Price (Midpoint Peg and Discretionary Peg), and in some cases with the ability to also exercise price discretion in specified circumstances (Discretionary Peg and Primary Peg). As proposed, the Market Peg order would function in a similar manner but provide flexibility to market participants to peg their orders to the most aggressive possible resting price, with an optional passive offset. Such functionality could be used to price the order aggressively to enhance its execution opportunities. IEX

³⁶ 15 U.S.C. 78f(b).

³⁷ 15 U.S.C. 78f(b)(5).

believes that implementing this functionality through an exchange order type will make it more widely available to market participants on a fair and non-discriminatory basis.

At the same time, the offset instruction would be offered on a purely voluntary basis, and with flexibility for Users to choose the amount of any offset, thereby providing flexibility to continue using current pegged order types without a User specified offset and to choose different offsets based on a User's specific needs. The Exchange does not believe that providing flexibility to Users to select the amount of any offset raises any significant or novel concerns, since similar offset functionality is already available on other national securities exchanges, as discussed in the Purpose section.³⁸

Further, IEX believes that it is consistent with the Act to not permit a Market Peg order to trade when the market is locked or crossed. First, as noted in the Purpose section, this functionality is identical to that of IEX's Offset Peg orders.³⁹ While IEX's remaining pegged order types are eligible to trade in locked or crossed markets, they are repriced away from the locking and crossing price (except for Midpoint Peg orders in a locked market which continue to be priced at the locking Midpoint Price), which is designed to prevent trading at the locking or crossing price.

As noted in the Purpose section, a Market Peg order cannot be priced away from the locking or crossing price because the contra-side primary quote will be the locking or crossing price. Therefore, to prevent a Market Peg order from trading at the locking or crossing price, IEX proposes to not allow them to trade during locked or crossed markets. As noted in the

³⁸ See supra note 33

³⁹ See supra note 31.

Purpose section Arca applies the same limitations to their market peg orders.⁴⁰ Additionally, IEX believes that the methodology for pricing Market Peg orders during locked and crossed markets is consistent with the Act because it is designed to price such orders at the least aggressive price that is consistent with the terms of the order so as to avoid exacerbating the lock or cross.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is a competitive response to similar order types available on other exchanges.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Competing exchanges have and can continue to adopt similar order types, subject to the SEC rule change process, as discussed in the Purpose and Statutory Basis sections.⁴¹

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. All Members would be eligible to use a Market Peg order type on the same terms.

⁴⁰ See supra note 34.

⁴¹ See supra note 33.

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)⁴² of the Act and Rule 19b-4(f)(6)⁴³ 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. In addition, the Exchange provided the Commission with 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 business days prior to the date of filing.⁴⁴

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4⁴⁵ because it is substantially similar to order types previously approved or considered by the Commission and as discussed in the Statutory Basis and Burden on Competition sections.⁴⁶ Thus, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission.

Accordingly, the Exchange has designated this rule filing as non-controversial under

⁴² 15 U.S.C. 78s(b)(3)(A).

⁴³ 17 CFR 240.19b-4(f)(6).

⁴⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁵ 17 CFR 240.19b-4(f)(6).

⁴⁶ See supra notes 33 and 38.

Section 19(b)(3)(A) of the Act⁴⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.⁴⁸

The Exchange will implement the proposed rule change within 90 days of filing, subject to the 30-day operative delay, and provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

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)⁴⁹ 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-2022-05 on the subject line.

Paper comments:

⁴⁷ 15 U.S.C. 78s(b)(3)(A).

⁴⁸ 17 CFR 240.19b-4.

⁴⁹ 15 U.S.C. 78s(b)(2)(B).

- 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-2022-05. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2022-05, 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.⁵⁰

J. Matthew DeLesDernier

Deputy Secretary

⁵⁰ 17 CFR 200.30-3(a)(12).