

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96187; File No. SR-IEX-2022-08)

October 31, 2022

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 11.190(e) to Expand the Availability of the Exchange’s Existing Anti-Internalization Functionality to More Members

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 October 24, 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 the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 11.190(e) to expand the availability of the Exchange’s existing anti-internalization functionality to more Members. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁵ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁶

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

⁶ 17 CFR 240.19b-4.

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(e) to expand the availability of the Exchange's existing anti-internalization group identifier ("AIQ") functionality to more Members.⁷ Specifically, the Exchange is proposing to allow Members to apply AIQ to orders submitted by an Affiliate⁸ that is also an IEX Member (a "Member Affiliate"), if so desired.

IEX offers optional anti-internalization functionality to Users⁹ that enables a User to prevent two of its orders from executing against each other. Currently, Users can set the anti-

⁷ See IEX Rule 1.160(s) (defining the term "Member").

⁸ An "Affiliate" is a person (including an entity) that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. See 17 CFR § 240.12b-2.

⁹ Pursuant to IEX Rule 1.160(qq), a User means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130. Sponsored Participant is defined in IEX Rule 1.160(ll).

internalization functionality to apply at the market participant identifier (“MPID”) or User level. To utilize IEX’s optional anti-internalization functionality, a User adds a unique identifier of its choosing designating the order as subject to anti-internalization (the “AIQ identifier”).¹⁰ Orders that have the same AIQ identifier and originate from the same MPID or User, as specified by the User,¹¹ are part of the same “AIQ group.”¹² And any active order that is part of the same AIQ group is prevented from executing against a resting opposite side order that is part of the same AIQ group.

Users seeking to apply AIQ to their orders also include one of five modifiers to their orders, which determines the interaction between two orders within the same AIQ group that would otherwise execute against each other (“AIQ modifier”).¹³ The AIQ modifier on the order with the newer timestamp controls the interaction between the two orders in an AIQ group.¹⁴ The five possible interactions for two orders with AIQ instructions that would otherwise match are: cancel the older of the two orders; cancel the newer of the two orders; cancel both orders; cancel the smaller of the two orders; or cancel the smaller of the two orders and decrement the size of the smaller order from the larger order.¹⁵

Proposal

IEX understands that some Members would like to apply AIQ to orders submitted by their Affiliates who are also Members. For example, if Member A is under common control with

¹⁰ See IEX Rule 11.190(e)(1)(A).

¹¹ Users may elect to enable anti-internalization functionality on an IEX Port Request Form, designating whether such functionality should be applied on an MPID or User basis.

¹² See IEX Rule 11.190(e)(1)(B).

¹³ See IEX Rule 11.190(e)(1)(B).

¹⁴ See IEX Rule 11.190(e).

¹⁵ See IEX Rule 11.190(e)(2).

Member B, the two Members would like the option of applying AIQ to orders submitted by the two Member Affiliates. Therefore, the Exchange proposes to expand the availability of the anti-internalization functionality it offers by allowing AIQ groups to be set at the Member Affiliate level in addition to the current options of setting AIQ groups at the User or MPID level. This proposal is designed to offer AIQ functionality to Member Affiliates that have divided their business activities between separate corporate entities without disadvantaging them when compared to Members that operate those business activities within a single corporate entity. This proposal would expand the levels at which AIQ groups can be set by a Member, but nothing in this proposal would change the manner in which two orders in the same AIQ group interact.

Specifically, IEX proposes to amend IEX Rule 11.190(e)(1)(B) to include “Member Affiliates” as one of the possible levels for AIQ groups (in addition to the current options of MPID or User). And the Exchange proposes to add subparagraph (i) to IEX Rule 11.190(e)(1)(B) to specify that for purposes of subparagraph (e)(1)(B), the term “Member Affiliates” shall mean Members that are affiliated with each other pursuant to Rule 12b-2 under the Act.¹⁶ If Members choose to have AIQ applied across Member Affiliates, the anti-internalization functionality would prevent quotes and orders from such Member Affiliates from trading against one another.

Under this proposal if Member A submits an order to buy 100 shares of security ABC for \$10.00 with a user-supplied AIQ identifier, and Member B, an Affiliate of Member A, submits an order to sell 100 shares of security ABC for \$10.00 with the same User-supplied AIQ identifier (meaning the two orders are in the same AIQ group), the two otherwise executable orders will not match, but will instead interact based upon the User-supplied AIQ modifier on the newer order.

¹⁶ See supra note 8.

Members will be responsible for having proper internal documentation in their books and records substantiating that two or more Members using AIQ are Affiliates of one another. IEX notes that this grouping of Member Affiliates is already a common practice for exchanges that offer rebates, in order to not penalize two affiliated members when calculating rebate tiers.¹⁷

This proposed rule change is designed to provide additional flexibility to Members in how they implement self-trade prevention provided by the Exchange, and thereby better manage their order flow and prevent undesirable executions or the potential for “wash sales” that may occur as a result of the speed of trading in today’s marketplace. Based on informal discussions with Members, the Exchange believes that the proposed additional types of anti-internalization functionality will be useful to Members in implementing their own compliance controls. And the additional AIQ functionality may assist Members in complying with certain rules and regulations of the Employee Retirement Income Security Act (“ERISA”) that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

The Exchange notes that, as with the current anti-internalization functionality offered by IEX, use of the proposed new Member Affiliate AIQ grouping will not alleviate, or otherwise exempt, Members from their best execution obligations. As such, Members and their Affiliates using AIQ will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been

¹⁷ See, e.g., the Nasdaq Stock Market LLC Equity 7, Section 127 (“Aggregation of Activity of Affiliated Members”); Nasdaq BX, Inc. Equity 7, Section 127 (“Aggregation of Activity of Affiliated Members”); New York Stock Exchange LLC Price List, General II (“Aggregate Billing of Affiliated Member Organizations”) at 24, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

inhibited by anti-internalization.¹⁸ Further, as with current rule provisions, Market Makers and other Users may not use AIQ functionality to evade the firm quote obligation, as specified in IEX Rule 11.151(b), and the AIQ functionality must be used in a manner consistent with just and equitable principles of trade.¹⁹ For these reasons, the Exchange believes the proposed new Member Affiliate level of AIQ grouping offers Members enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5),²¹ 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 allowing Member Affiliates to be part of the same AIQ group will provide Members with additional flexibility with respect to how they implement self-trade protections provided by IEX that may better support their trading strategies and compliance controls. Members that prefer the current anti-internalization groupings offered by the Exchange can continue to use them without any modification (i.e., if two Member

¹⁸ See Supplementary Material .01 to IEX Rule 11.190(e).

¹⁹ See Supplementary Materials .02 and .03 to IEX Rule 11.190(e).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

Affiliates do not wish to have orders from the two Members be in the same AIQ group, the Members will not have to make any changes to the manner in which they submit orders to the Exchange).

As noted in the Purpose section, IEX believes that providing Members with more flexibility and control over the interactions of their orders will better prevent undesirable executions or the potential for “wash sales” that may occur as a result of the speed of trading in today’s marketplace. And the Member Affiliate level AIQ grouping may better assist Members in complying with certain ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

Additionally, as discussed in the Purpose section, allowing Members to apply AIQ to trades submitted by their Affiliates that are also Members is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. Accordingly, the Exchange believes that this proposed rule change is fair and equitable, and not unreasonably discriminatory.

Further, the Exchange believes that providing expanded AIQ grouping options may streamline certain regulatory functions by reducing false positive results that may occur on wash trading surveillance reports when two orders in the same AIQ group are executed, notwithstanding that the transaction may not constitute a wash trade.

Finally, as discussed in the Purpose section, the Exchange notes that exchanges allowing Members to combine their trading activity with Affiliates is already a common practice at several

other national securities exchanges.²² Consequently, the Exchange does not believe that the proposed rule change raises any new or novel issues not already considered by the Commission.

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 designed to enhance IEX's competitiveness by providing additional flexibility over the level at which orders are grouped, thereby incentivizing Members to send orders to IEX and increase the liquidity available on the Exchange. Additionally, the proposed rule change is designed to assist Members with compliance with the securities laws that prohibit wash trading as well as ERISA requirements. The Exchange also notes that the proposed new AIQ grouping option, like the Exchange's current anti-internalization functionality, is completely optional and Members can determine on an order-by-order, MPID, User, or Member Affiliate basis whether to apply anti-internalization protections to orders submitted to the Exchange.

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. Moreover, there is no barrier to other national securities exchanges adopting similar anti-internalization grouping at the Member Affiliate level.

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 will continue to be eligible to use the Exchange's anti-internalization functionality. While not every Member engages in a business that might involve risks of self-matching against an Affiliate's orders, for the Members that do face that risk, the

²² See supra note 17.

proposed additional anti-internalization grouping is designed to help such Members with their compliance with the securities laws and ERISA. Further, implementation of anti-internalization functionality impacts only a Member's orders (and the orders of the Member Affiliates), and not the orders of other, unaffiliated Members. And, as discussed in the Purpose and Statutory Basis sections, allowing Members to apply AIQ to trades submitted by their Affiliates that are also Members is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity.

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)²³ of the Act and Rule 19b-4(f)(6)²⁴ 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.²⁵

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4²⁶ because, as discussed above, this rule change does not modify any of its existing AIQ functionality, but simply offers an additional level of optional AIQ grouping to Members with Affiliates that are also Members. As discussed above, several other exchanges currently allow Members to group their orders with those of their Affiliates for fee purposes.²⁷ 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 the existing anti-internalization functionality offered by IEX.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act²⁸ and paragraph (f)(6) of Rule 19b-4 thereunder.²⁹ 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)³⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ See supra note 17.

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 15 U.S.C. 78s(b)(2)(B).

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-2022-08 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-2022-08. 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-2022-08, 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.³¹

J. Matthew DeLesDernier

Deputy Secretary

³¹ 17 CFR 200.30-3(a)(12).