

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96935; File No. SR-IEX-2023-02)

February 15, 2023

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date of Recently-Approved Changes to IEX Rule 11.190(g) that are Designed to Provide an Alternative Calculation for Pegged Order Types for Determining Whether a Quote Instability Condition Exists

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 7, 2023, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 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 proposal to extend the implementation date of recently-approved changes to IEX Rule 11.190(g) that are designed to provide an alternative calculation for pegged order types for determining whether a quote instability condition exists. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁵

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 17 CFR 240.19b-4(f)(6)(iii).

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 statements 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

IEX is filing this proposal to extend the implementation date of recently-approved changes to IEX Rule 11.190(g) that are designed to provide an alternative calculation for pegged order types for determining whether a quote instability condition exists ("original rule change"). IEX filed the proposed original rule change on September 27, 2022,⁶ and the Commission approved it on December 1, 2022.⁷ The original rule change is currently scheduled to be implemented within 90 days of the Approval Order⁸, i.e., on or before March 1, 2023.

The Exchange had anticipated that the technical changes necessary to implement the

⁶ See Securities Exchange Act Release No. 96014 (October 11, 2022), 87 FR 62903 (October 17, 2022) (SR-IEX-2022-06) ("Original Filing").

⁷ See Securities Exchange Act Release No. 96416 (December 1, 2022), 87 FR 75099 (December 7, 2022) (SR-IEX-2022-06) ("Approval Order").

⁸ See supra note 6.

original rule change would be completed in time to enable implementation on or before March 1, 2023. However, due to unforeseen delays, the technical changes are not yet complete, and IEX needs additional time to implement beyond the 90 days specified in the Original Filing. As a result, the Exchange is now proposing to implement the proposed changes by June 30, 2023, and will announce the implementation date by Trading Alert at least ten (10) days in advance of such implementation date. Besides the implementation date, the Exchange is not proposing to make any changes to the terms of the Original Filing.

2. Statutory Basis

IEX believes that its proposal is consistent with the provisions of Section 6(b) of the Act⁹ in general, and with Section 6(b)(5) of the Act¹⁰, in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposal is consistent with the Act because it will allow the Exchange to complete technical changes necessary to implement the original rule change in a thorough and risk averse manner, thereby protecting investors. Further, the ten (10) days' notice to market participants of the implementation date for the original rule filing is consistent with the Act because it will provide appropriate transparency to the Commission and market participants regarding the change. Finally, as noted in the Purpose section, the Exchange is not proposing to make any changes to the terms of the Original Filing other than the implementation date.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

IEX does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the planned implementation of recently-approved changes to IEX Rule 11.190(g) and to inform the Commission and market participants of that change. The currently functionality of IEX Rule 11.190(g) will continue to be available until the Original Filing is implemented, and the implementation delay will impact all market participants equally. The Exchange does not expect the implementation date change to place any burden on competition. Rather, postponing implementation will allow the Exchange to implement the original rule change in a thorough and risk averse manner and is not designed for any competitive purpose.

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 filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that waiving the operative delay will permit the Exchange to implement the proposal prior to expiration of the latest implementation date to the original rule change, which the Exchange states will avoid any potential confusion on the part of market participants or the Commission as to when the original rule change will be implemented. Based on the foregoing, the Commission believes that allowing this proposal to become operative upon filing is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁷

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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2023-02 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-2023-02. 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, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices 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-2023-02, 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.¹⁸

Sherry R. Haywood
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12), (59).