

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98035; File No. SR-IEX-2023-06)

August 1, 2023

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add a New Fixed Midpoint Peg Order Type

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 July 19, 2023, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act³, and Rule 19b-4 thereunder⁴, IEX is filing with the Commission a proposed rule change to add a new fixed midpoint peg order type that pegs to the less aggressive of the order’s limit price or the Midpoint Price⁵, but does not re-price based on changes to the NBBO.⁶ The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁷ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁸

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 See IEX Rule 1.160(t).

⁶ See IEX Rule 1.160(u).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190 to add a new fixed midpoint peg order type that pegs to the less aggressive of the order's limit price or the Midpoint Price but does not re-price based on changes to the NBBO. As detailed below, a fixed midpoint peg order will cancel back to the User⁹ if the NBBO changes such that the resting price of the fixed midpoint peg order is subject to change. In addition, the Exchange proposes four conforming amendments to IEX Rules Rule 11.190(a)(3) and 11.190(h)(3).

Currently, the Exchange offers a midpoint peg order type, which, upon entry and when posting to the Order Book¹⁰, is automatically adjusted by the System¹¹ to be equal to and ranked

⁹ See IEX Rule 1.160(qq).

¹⁰ See IEX Rule 1.160(p).

¹¹ See IEX Rule 1.160(nn).

at the less aggressive of the Midpoint Price or the order's limit price.¹² Midpoint peg orders resting on the Order Book are automatically adjusted by the System in response to changes in the midpoint of the NBBO as allowed by the order's limit price, if any.¹³ Midpoint peg orders are non-displayed¹⁴ and may have a minimum quantity instruction.¹⁵

IEX has received informal feedback from Members¹⁶ that they would like the option of having more determinism when submitting midpoint peg orders. Specifically, IEX understands that some Members would like the option of submitting a midpoint peg order that will only execute at the Midpoint Price at the time of entry (or the order's limit price, if less aggressive than the Midpoint Price). These Members note that this functionality would assist with having more determinism of the price at which orders would trade.

Accordingly, IEX proposes to add subparagraph (b)(19) to IEX Rule 11.190, to add the fixed midpoint peg order type. IEX notes that, as proposed, the fixed midpoint peg order is based upon and very similar to IEX's midpoint peg order type, with the following differences: i) a fixed midpoint peg order will cancel if, after the order is booked, the Midpoint Price changes such that the order would need to be re-priced in order to rest at the Midpoint Price or its limit price if less aggressive than the Midpoint Price; ii) a fixed midpoint peg order will cancel if it is received when there is no NBB¹⁷ or NBO¹⁸, or the NBBO is crossed; iii) a fixed midpoint peg order will not trade while the market is crossed; and iv) a fixed midpoint peg order cannot be

¹² See IEX Rule 11.190(b)(9).

¹³ See Id. and IEX Rule 11.190(h)(2).

¹⁴ See IEX Rule 11.190(b)(9)(H).

¹⁵ See IEX Rules 11.190(b)(9)(G) and (b)(12).

¹⁶ See IEX Rule 1.160(s).

¹⁷ See IEX Rule 1.160(u).

¹⁸ See IEX Rule 1.160(u).

submitted with a minimum quantity instruction.¹⁹

Like a midpoint peg order²⁰, the proposed fixed midpoint peg:

- Would upon entry and when posting to the order book, have its price adjusted by the System to be equal to and ranked at the less aggressive of the Midpoint Price or the order's limit price, if any;
- Must be a pegged order;
- May have any TIF described in IEX Rules 11.190(a)(3) and (c);
- Would not be eligible for routing pursuant to IEX Rule 11.230(b) and (c)(2);
- May not be an ISO, as defined in IEX Rule 11.190(b)(12);
- May be submitted with a limit price or without a limit price (an "unpriced pegged order");
- Would be eligible to trade only during the Regular Market Session. As provided in IEX Rule 11.190(a)(3)(D), any pegged order marked with a TIF of DAY that is submitted to the System before the opening of the Regular Market Session would be queued by the System until the start of the Regular Market Session; any pegged order that is marked with a TIF other than DAY would 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 would be rejected;
- Would not be eligible to display. Pegged orders are always non-displayed;
- May be an odd lot, round lot, or mixed lot; and
- Would be 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).

However, as proposed, a fixed midpoint peg order would differ from a midpoint peg order in the following ways:

- An incoming fixed midpoint peg order would be canceled by the System if it is received when there is no NBB or NBO, or the NBBO is crossed;
- The price of a fixed midpoint peg order would never be re-priced based on changes to the NBBO;
- A fixed midpoint peg order may not have a minimum quantity instruction, as defined in IEX Rule 11.190(b)(11);

¹⁹ See IEX Rule 11.190(b)(11).

²⁰ See IEX Rule 11.190(b)(9).

- A resting fixed midpoint peg order would be canceled back to the User if any of the following conditions were met:
 - The fixed midpoint peg order to buy (sell) is entered either without a limit price, or with a limit price that is equal to or above (below) the Midpoint Price and is ranked at the Midpoint Price; thereafter, the NBBO changes so that the Midpoint Price changes (“Scenario 1”);
 - The fixed midpoint peg order to buy (sell) is entered at a limit price that is equal to or below (above) the Midpoint Price and is ranked at its limit price; thereafter, the NBBO changes so that the Midpoint Price is lower (higher) than the limit price of the fixed midpoint peg order (“Scenario 2”); or
 - The fixed midpoint peg order to buy (sell) is entered either without a limit price, or with a limit price that is equal to or above (below) the Midpoint Price and is ranked at the Midpoint Price; thereafter the NBBO becomes crossed, such that the Midpoint Price is considered indeterminable as set forth in IEX Rule 11.190(h)(3)(D)(i). However, if the crossing price (NBO for buys/NBB for sells) is equal to the fixed midpoint peg’s resting price, the order will not be canceled, but it will be ineligible to trade (“Scenario 3”).

As proposed, IEX would cancel an incoming fixed midpoint peg order that arrives when the market is crossed or there is no NBB or NBO because IEX treats the Midpoint Price as indeterminable²¹ during these circumstances and accordingly there is no Midpoint Price for the order to peg to.

As proposed, a fixed midpoint peg order will not re-price after it posts to the Order Book, but would cancel if the Midpoint Price changes such that the resting price of the fixed midpoint peg order is subject to change. The conditions under which a fixed midpoint peg order would cancel that are set forth in Scenarios 1 to 3, above, each represent circumstances in which changed market conditions would cause a midpoint peg to re-price, but (as proposed) would cause a fixed midpoint peg order to cancel, consistent with the purpose of the order type. Specifically, in Scenario 1, the order was booked at the Midpoint Price (either because it had no

²¹ See IEX Rule 11.190(h)(3)(D)(i).

limit price or a limit price equal to or more aggressive than the Midpoint Price), and the NBBO changes the Midpoint Price. In Scenario 2, the order is booked at a price equal to or less aggressive than the Midpoint Price, and then the market changes such that the new Midpoint Price is less aggressive than the price at which the order had been resting. In Scenario 3, the order is resting at the Midpoint Price and thereafter the NBBO becomes crossed which would trigger a midpoint peg to re-price to the “crossing price” (the lowest Protected Offer²² for buy orders and the highest Protected Bid²³ for sell orders)²⁴. However, Scenario 3 provides that if the fixed midpoint peg order’s resting price is the same as the crossing price, the order would not be canceled or re-priced, but would be ineligible to trade while the market is crossed.

Finally, IEX is proposing to not allow fixed midpoint peg orders to include a minimum quantity instruction (“MQTY”) in order to prevent cancellations inconsistent with the purpose of the fixed midpoint peg order type. IEX’s non-displayed price sliding rules are designed to prevent an unprotected displayed odd lot order with that cannot execute with a contra-side order because it does not satisfy that order’s MQTY from causing the IEX Order Book to lock or cross. In this circumstance, the System re-prices the resting MQTY order to a price one minimum price variant (“MPV”)²⁵ less aggressive than the contra-side displayed odd-lot order’s price. This functionality could lead a fixed midpoint peg order resting at the Midpoint Price to re-price even if the Midpoint Price has not changed. Accordingly, IEX believes that it is consistent with the purpose of the order type and User expectations to not allow a MQTY instruction to cause a cancellation because the order must re-price despite there being no change to the Midpoint Price.

²² See IEX Rule 1.160(bb).

²³ See IEX Rule 1.160(bb).

²⁴ See IEX Rule 11.190(h)(3)(D)(i).

²⁵ See IEX Rule 11.210.

IEX notes that its proposed fixed midpoint peg order type is substantially similar to the Fixed Midpoint Peg Post-Only Order type offered by Nasdaq PHLX LLC (“Nasdaq PHLX”), with a few minor differences as follows:²⁶

- If a Nasdaq PHLX Fixed Midpoint Peg Post-Only Order is submitted with a limit price equal to the Midpoint Price, and the Midpoint Price moves to a more aggressive price than the resting order’s limit price, Nasdaq PHLX will not cancel the order. IEX, by contrast, proposes to cancel a fixed midpoint peg order in such circumstances, as set forth in Scenario 2 above. IEX believes that this approach is appropriate because the order type is designed to provide a midpoint execution in a more deterministic manner and in this scenario, the Midpoint Price has changed.
- If the NBBO becomes crossed while a Nasdaq PHLX Fixed Midpoint Peg Post-Only Order is resting on the book Nasdaq PHLX will not cancel the order unless the order would need to be re-priced or an incoming order could match with it.²⁷ IEX, in contrast will cancel the order as described above if it would otherwise need to be re-priced and if not canceled the order would be ineligible to trade with an incoming order while the NBBO is crossed.²⁸ These two approaches have the same ultimate effect of preventing trading in a crossed market, and are therefore substantively similar, with the exception that IEX will not necessarily cancel the order to prevent the unwanted trade.
- Nasdaq PHLX permits a Fixed Midpoint Peg Post-Only Order to have a minimum quantity instruction, while IEX proposes to not allow such an instruction. As discussed above, IEX believes that not allowing a minimum quantity instruction is more consistent with the purpose of the order type and User expectations.

In addition, the Exchange proposes four conforming amendments to other IEX rules:

- Amend IEX Rule 11.190(a)(3) to add fixed midpoint peg orders to the list of pegged order types offered by IEX;
- Amend IEX Rule 11.190(a)(3) to add fixed midpoint peg to the list of orders that may execute in sub-pennies if necessary to obtain a Midpoint Price;
- Amend IEX Rule 11.190(h)(3)(D)(i) to add a sentence at the end stating that in a crossed market, “fixed midpoint peg orders will be canceled back to the User unless the crossing price is equal to the fixed midpoint peg order’s resting price.” This sentence reflects the fixed midpoint peg order functionality in proposed IEX Rule 11.190(b)(19). IEX notes that this functionality is consistent with the manner in which it will cancel an incoming fixed midpoint peg order during a

²⁶ See Nasdaq PHLX Rule 3301A(b)(6).

²⁷ See supra note 26.

²⁸ See proposed IEX Rule 11.190(h)(3)(D)(iii).

crossed market, and is identical to how Nasdaq PHLX handles Fixed Midpoint Peg Post-Only Orders in a crossed market²⁹; and

- Amend IEX Rule 11.190(h)(3)(D)(iii) to add fixed midpoint peg to the list of orders that are not eligible to trade when the market is crossed in IEX Rule 11.190(h)(3)(D)(iii). This functionality is also identical to how Nasdaq PHLX prevents Fixed Midpoint Peg Post-Only Orders from trading in a crossed market.³⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³¹ in general, and furthers the objectives of Section 6(b)(5),³² 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 provide an optional order type for Users seeking a midpoint execution in a more deterministic manner, as described in the Purpose section.

Further, IEX believes that the proposal is consistent with the protection of investors and the public interest in that the fixed midpoint peg order type would provide additional flexibility to market participants in their use of pegging orders. As described in the Purpose section, the fixed midpoint peg order would provide market participants with more control over the price at which their midpoint pegging orders execute because the order's price would not move with

²⁹ See supra note 26.

³⁰ See supra note 26.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

changes to the Midpoint Price. IEX understands that such functionality could be useful for execution strategies designed to avoid chasing rising quotes or ones predicated on greater precision of execution prices. IEX 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.

Furthermore, IEX believes that its proposed treatment of fixed midpoint peg orders during crossed market is consistent with the Act because the Midpoint Price is indeterminable during a crossed market so trading during such time would be inconsistent with the purpose of the order type.

Additionally, IEX believes that the proposal to not allow a fixed midpoint peg order to have a MQTY instruction is consistent with the protection of investors and the public interest in that this functionality is designed to prevent inconsistent cancellations if the MQTY instruction prevented a fixed midpoint peg order from executing and instead caused the System to re-price the order. As discussed in the Purpose section, because these orders are designed to cancel rather than re-price, IEX believes that it is consistent with the purpose of the order type and User expectations to not allow a MQTY instruction.

The Exchange also 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 market participants with additional options and flexibility in their use of pegging orders, as described in the Purpose section, and thereby enable the Exchange to better compete with other trading venues that offer similar features to market participants.

Finally, as noted in the Purpose section, this proposal is substantially similar to Nasdaq

PHLX's Fixed Midpoint Peg Post-Only Order type, with three minor differences in implementation as discussed in the Purpose section.³³ As discussed in the Purpose section, IEX believes that its proposed approach to each of these minor differences is consistent with the purpose of the fixed midpoint peg order type and Users' expectations. 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, notwithstanding these minor differences.

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 section.

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 the fixed midpoint peg order type on the same terms.

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.

³³ See supra note 26.

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) of the Act³⁴ and Rule 19b-4(f)(6) thereunder.³⁵ 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 prior to 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 Section 19(b)(3)(A) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷

At any time within 60 days of the filing of such 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.

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:

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, 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.

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2023-06 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-2023-06. This file number should be included on 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-IEX-2023-06 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,

Assistant Secretary.

³⁸ 17 CFR 200.30-3(a)(12).