

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 03 Amendment No. (req. for Amendments *)
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Filing by Investors' Exchange LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Allow Retail Orders to Trade with Certain Aggressively Priced Displayed Odd Lot Orders.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Nathaniel Last Name \* Kolodny  
 Title \* Lead Regulation Counsel  
 E-mail \* nathaniel.kolodny@iextrading.com  
 Telephone \* (646) 343-2034 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Date 03/01/2021  
 By Nathaniel Kolodny (Name \*)  
 Lead Regulation Counsel  
 Nathaniel Kolodny.

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to how Retail orders interact with displayed odd lot orders.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Claudia Crowley  
Chief Regulatory Officer  
Investors Exchange LLC  
646-343-2041

Nathaniel Kolodny  
Lead Regulation Counsel  
Investors Exchange LLC  
646-343-2034

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of this proposed rule change is to modify the manner in which Retail orders<sup>3</sup> interact with displayed odd lot orders, to make it consistent with the manner in which the Exchange otherwise handles displayed odd lot orders.<sup>4</sup> Specifically, as detailed below, IEX proposes to change the rules regarding Retail orders to allow them to execute against a displayed odd lot order priced more aggressively than the Midpoint Price.<sup>5</sup>

IEX will soon be implementing rule changes that modify the way it handles odd lot orders by allowing them to be displayed orders and to aggregate to form a protected quotation,<sup>6</sup> which include rule provisions that allow displayed buy (sell) orders to rest on the IEX Order Book<sup>7</sup> at prices more aggressive than both the NBB<sup>8</sup> (NBO<sup>9</sup>) and the Midpoint Price.<sup>10</sup> IEX's displayed odd lot rule filing included several related rule changes to prevent a displayed odd lot order that is a not protected quotation from resulting in a lock or cross of IEX's Order Book.<sup>11</sup> Specifically, IEX adjusted its non-

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<sup>3</sup> See IEX Rules 11.190(b)(15) and 11.232(a)(2).

<sup>4</sup> IEX recently made an immediately effective rule filing to allow displayed odd lot orders on the Exchange. See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

<sup>5</sup> The term "Midpoint Price" shall mean the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" shall mean the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

<sup>6</sup> IEX currently expects to implement the rule changes to provide for displayed odd lots during the first quarter of 2021. See <https://iextrading.com/alerts/#/137> (January 29, 2021).

<sup>7</sup> See IEX Rule 1.160(p).

<sup>8</sup> See IEX Rule 1.160(u).

<sup>9</sup> See IEX Rule 1.160(u).

<sup>10</sup> See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

<sup>11</sup> See *supra* note 10 at 6689-90.

displayed price sliding rules to adjust the price of non-displayed orders that would otherwise be locked or crossed by a displayed odd lot order, and changed its order execution rules to allow a displayed order previously subject to price sliding to match with a contra-side displayed odd lot order that the original order would have locked or crossed upon a subsequent repricing.<sup>12</sup>

IEX has identified an additional circumstance in which a displayed unprotected odd lot order could result in a suboptimal trading impact. Specifically, a displayed unprotected odd lot order that is resting at a price more aggressive than the Midpoint Price (i.e. above the Midpoint Price in the case of a buy order and below the Midpoint Price in the case of a sell order) would effectively block a Retail order's access to orders resting at the Midpoint Price. Thus, IEX now proposes to make an analogous change to allow Retail orders to interact with displayed odd lot orders priced more aggressively than the Midpoint Price.

IEX introduced its Retail Price Improvement Program ("Retail Program") in 2019.<sup>13</sup> IEX's Retail Program is designed to provide retail investors with meaningful price improvement opportunities by offering price improvement to Retail orders. Only Members<sup>14</sup> that the Exchange has approved as Retail Member Organizations ("RMO")<sup>15</sup> may submit Retail orders to the Exchange on behalf of their retail customers.<sup>16</sup> Retail

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<sup>12</sup> See supra note 10 at 6689-90.

<sup>13</sup> See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (SEC order approving IEX's Retail Price Improvement Program).

<sup>14</sup> See IEX Rule 1.160(s).

<sup>15</sup> See IEX Rule 11.232(a)(1).

<sup>16</sup> For a Member to be approved as a RMO, it must complete an application and submit materials reflecting that it either conducts a retail business or routes retail orders on behalf of another broker-dealer. See IEX Rule 11.232(b).

orders are Discretionary Peg<sup>17</sup> or Midpoint Peg<sup>18</sup> orders with a Time-in-Force of IOC or FOK, and that are only eligible to trade at the Midpoint Price. Restricting Retail orders to only execute at the Midpoint Price was designed to maximize their price improvement opportunities, while recognizing that in 2019, a large portion of IEX's resting liquidity was non-displayed orders eligible to execute at the Midpoint Price.<sup>19</sup>

Because displayed odd lot orders can book at prices more aggressive than the Midpoint Price, but Retail orders can only trade at the Midpoint Price, Retail orders could miss the opportunity to obtain even more price improvement that would be obtained by executing against an aggressively priced displayed odd lot order. By way of example, if the market is \$10.10 by \$10.20, and IEX has on its Order Book a displayed odd lot order to sell 50 shares at \$10.13 and a non-displayed Midpoint Peg order to sell 100 shares at the Midpoint Price of \$10.15, and IEX receives an incoming Retail order to buy 100 shares; the Retail order would not be able to match with the Midpoint Peg order at \$10.15 because the displayed odd lot order has price priority to the Midpoint Peg order. However, the Retail order also cannot execute against the displayed odd lot order because a Retail order is only eligible to trade at the Midpoint Price. Therefore, the Retail order is not executable under current IEX rules and would be canceled.<sup>20</sup> If the Retail order could trade with the aggressively priced displayed odd lot order, 50 shares would execute with the displayed odd lot order at \$10.13, and the remaining 50 shares would execute with the Midpoint Peg order at \$10.15. Allowing the Retail order to match with the aggressively priced displayed odd lot order would offer greater price improvement for the 50 shares

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<sup>17</sup> See IEX Rule 11.190(b)(10).

<sup>18</sup> See IEX Rule 11.190(b)(9).

<sup>19</sup> See *supra* note 13.

<sup>20</sup> See IEX Rule 11.230(a) (a non-executable, non-routable order will be canceled).

that matched at \$10.13.

Therefore, IEX is proposing to modify IEX Rules 11.232(a)(2) and (e)(2) to provide that Retail orders are only eligible to trade at the Midpoint Price, with the exception that Retail orders can also trade with an aggressively priced displayed odd lot order priced on the far side of the Midpoint Price. In other words, as proposed, a Retail order to sell (buy) can match with any order to buy (sell) at the Midpoint Price or a displayed odd lot order to buy (sell) priced at or between the NBO (NBB) and the Midpoint Price.

IEX notes that this proposed rule change is consistent with the rules of the other exchanges with retail price improvement programs, none of which restrict their retail orders from only executing at the Midpoint Price.<sup>21</sup>

IEX is also proposing a conforming amendment to Rule 11.232(e)(3) to reflect that an aggressively priced displayed odd lot order will execute before any non-displayed Midpoint Price orders. In addition, IEX is proposing to add Example 4 at the end of Rule 11.232, to demonstrate how an aggressively priced displayed odd lot order will trade with a Retail order before the Retail order matches with any non-displayed Midpoint Price orders.

Finally, IEX is proposing to correct two typographical errors: add a missing “\$” in three places in Examples 1, 2, and 3; and correct the reference in Example 3, so it cites IEX Rule 11.220(a)(c)(vii) instead of Rule 11.220(a)(c)(viii).<sup>22</sup>

b. Statutory Basis

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<sup>21</sup> See NYSE Rule 7.44(a)(3); Cboe BYX Rule 11.24 (a)(2); Nasdaq BX Rule 4702(b)(6)(A).

<sup>22</sup> See supra note 10 (renumbering Rule 11.220(a)(c)(viii) as Rule 11.220(a)(c)(vii)).

The proposed rule change is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>24</sup> 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 to allow Retail orders to trade with an aggressively priced displayed odd lot order is consistent with the protection of investors and the public interest because it is designed to increase the opportunities for retail investors to obtain price improvement.

Furthermore, as discussed in the Purpose section, IEX believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to further incentivize the entry of additional Retail orders and displayed odd lot orders on IEX by providing the opportunity for Retail orders to obtain greater price improvement and additional execution opportunities against displayed odd lot orders, while offering increased execution opportunities to displayed odd lot orders. Moreover, because displayed odd lots can result from displayed limit orders of more than odd lot size, the Exchange believes that the proposed rule change is also designed to incentivize the entry of displayed limit orders generally by providing such increased execution opportunities to displayed odd lot orders. IEX believes that, to the extent the proposed rule change is successful in incentivizing the entry of additional Retail orders and

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).



displayed odd lot and limit orders on IEX it will provide increased liquidity on the Exchange to the benefit of all market participants, thereby supporting the purposes of the Act 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.

Additionally, IEX believes that the proposed corrections to IEX Rule 11.232 further the purposes of the Act because they will provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion of any market participants. Specifically, the proposed typographical fixes will prevent any confusion to market participants about the application of those examples, provide clarity, and reduce any possible confusion to market participants.

4. 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, and as discussed in the Statutory Basis section, the proposal is designed to enhance IEX's competitiveness with other markets by further incentivizing the entry of additional displayed odd lot and limit orders on IEX by providing additional execution opportunities for displayed odd lot orders and offering increased price improvement to Retail orders, thereby increasing the overall liquidity profile of the Exchange to the benefit of all market participants. IEX also believes that conforming the Exchange's treatment of Retail orders with that of other exchanges with

retail price improvement programs would promote intermarket competition for increasingly sought-after retail investor orders, to the benefit of retail customers in particular, and the market as a whole.

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. While only Members approved by the Exchange to be RMOs can submit Retail orders to the Exchange, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders. Further, any Member can submit a displayed odd lot or limit order and would therefore benefit if aggressively priced displayed odd lot orders have more opportunities to execute because they can now trade with Retail orders.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>25</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>26</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition,

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4.

(3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. 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.<sup>27</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>28</sup> because it is consistent with the protection of investors and the public interest in that it is designed to incentivize the entry of additional Retail orders and displayed odd lot and limit orders on IEX by providing the opportunity for Retail orders to obtain greater price improvement and additional execution opportunities against displayed odd lot orders, thereby enhancing price discovery and the overall liquidity profile on the Exchange to the benefit of all market participants, as discussed in the Purpose, Statutory Basis, and Burden on Competition sections.

IEX also does not believe that the proposed changes raise any new or novel issues that have not already been considered by the Commission because it is consistent with the manner in which Retail orders and displayed odd lot orders are treated by other equities exchanges, as discussed in the Purpose, Statutory Basis, and Burden on Competition sections. Specifically, the manner in which IEX proposes to allow Retail orders to execute against displayed odd lot orders priced more aggressively than the Midpoint Price is substantially similar to the functionality of the other equities exchanges.<sup>29</sup> Accordingly, the Exchange does not believe that the proposed approaches raise any new

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<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> See supra note 21.

or novel issues not previously considered by the Commission, and has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>30</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>31</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has respectfully requested that the Commission waive the 30-day operative delay so that IEX can implement the proposed rule change concurrently with implementation of its displayed odd lot rule filing which is anticipated within the next several weeks. IEX believes that synchronizing the timing for implementation of the proposed rule change with the displayed odd lot rule filing implementation will avoid confusion to market participants as to how Retail orders interact with displayed odd lot orders priced more aggressively than the Midpoint Price.

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.

8. Proposed Rule Change Based on the Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2021-03)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Retail Orders to Trade with Certain Aggressively Priced Displayed Odd Lot Orders.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on (date), 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 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 Act,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to how Retail orders interact with displayed odd lot orders.

The text of the proposed rule change is available at the Exchange’s website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

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

1. Purpose

The purpose of this proposed rule change is to modify the manner in which Retail orders<sup>6</sup> interact with displayed odd lot orders, to make it consistent with the manner in which the Exchange otherwise handles displayed odd lot orders.<sup>7</sup> Specifically, as detailed below, IEX proposes to change the rules regarding Retail orders to allow them to execute against a displayed odd lot order priced more aggressively than the Midpoint Price.<sup>8</sup>

IEX will soon be implementing rule changes that modify the way it handles odd lot orders by allowing them to be displayed orders and to aggregate to form a protected quotation,<sup>9</sup> which include rule provisions that allow displayed buy (sell) orders to rest on

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<sup>6</sup> See IEX Rules 11.190(b)(15) and 11.232(a)(2).

<sup>7</sup> IEX recently made an immediately effective rule filing to allow displayed odd lot orders on the Exchange. See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

<sup>8</sup> The term "Midpoint Price" shall mean the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" shall mean the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

<sup>9</sup> IEX currently expects to implement the rule changes to provide for displayed odd lots during the

the IEX Order Book<sup>10</sup> at prices more aggressive than both the NBB<sup>11</sup> (NBO<sup>12</sup>) and the Midpoint Price.<sup>13</sup> IEX's displayed odd lot rule filing included several related rule changes to prevent a displayed odd lot order that is a not protected quotation from resulting in a lock or cross of IEX's Order Book.<sup>14</sup> Specifically, IEX adjusted its non-displayed price sliding rules to adjust the price of non-displayed orders that would otherwise be locked or crossed by a displayed odd lot order, and changed its order execution rules to allow a displayed order previously subject to price sliding to match with a contra-side displayed odd lot order that the original order would have locked or crossed upon a subsequent repricing.<sup>15</sup>

IEX has identified an additional circumstance in which a displayed unprotected odd lot order could result in a suboptimal trading impact. Specifically, a displayed unprotected odd lot order that is resting at a price more aggressive than the Midpoint Price (i.e. above the Midpoint Price in the case of a buy order and below the Midpoint Price in the case of a sell order) would effectively block a Retail order's access to orders resting at the Midpoint Price. Thus, IEX now proposes to make an analogous change to allow Retail orders to interact with displayed odd lot orders priced more aggressively than the Midpoint Price.

IEX introduced its Retail Price Improvement Program ("Retail Program") in

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first quarter of 2021. See <https://iextrading.com/alerts/#/137> (January 29, 2021).

<sup>10</sup> See IEX Rule 1.160(p).

<sup>11</sup> See IEX Rule 1.160(u).

<sup>12</sup> See IEX Rule 1.160(u).

<sup>13</sup> See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

<sup>14</sup> See supra note 13 at 6689-90.

<sup>15</sup> See supra note 13 at 6689-90.



2019.<sup>16</sup> IEX's Retail Program is designed to provide retail investors with meaningful price improvement opportunities by offering price improvement to Retail orders. Only Members<sup>17</sup> that the Exchange has approved as Retail Member Organizations ("RMO")<sup>18</sup> may submit Retail orders to the Exchange on behalf of their retail customers.<sup>19</sup> Retail orders are Discretionary Peg<sup>20</sup> or Midpoint Peg<sup>21</sup> orders with a Time-in-Force of IOC or FOK, and that are only eligible to trade at the Midpoint Price. Restricting Retail orders to only execute at the Midpoint Price was designed to maximize their price improvement opportunities, while recognizing that in 2019, a large portion of IEX's resting liquidity was non-displayed orders eligible to execute at the Midpoint Price.<sup>22</sup>

Because displayed odd lot orders can book at prices more aggressive than the Midpoint Price, but Retail orders can only trade at the Midpoint Price, Retail orders could miss the opportunity to obtain even more price improvement that would be obtained by executing against an aggressively priced displayed odd lot order. By way of example, if the market is \$10.10 by \$10.20, and IEX has on its Order Book a displayed odd lot order to sell 50 shares at \$10.13 and a non-displayed Midpoint Peg order to sell 100 shares at the Midpoint Price of \$10.15, and IEX receives an incoming Retail order to buy 100 shares; the Retail order would not be able to match with the Midpoint Peg order at \$10.15 because the displayed odd lot order has price priority to the Midpoint Peg order.

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<sup>16</sup> See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (SEC order approving IEX's Retail Price Improvement Program).

<sup>17</sup> See IEX Rule 1.160(s).

<sup>18</sup> See IEX Rule 11.232(a)(1).

<sup>19</sup> For a Member to be approved as a RMO, it must complete an application and submit materials reflecting that it either conducts a retail business or routes retail orders on behalf of another broker-dealer. See IEX Rule 11.232(b).

<sup>20</sup> See IEX Rule 11.190(b)(10).

<sup>21</sup> See IEX Rule 11.190(b)(9).

<sup>22</sup> See *supra* note 16.

However, the Retail order also cannot execute against the displayed odd lot order because a Retail order is only eligible to trade at the Midpoint Price. Therefore, the Retail order is not executable under current IEX rules and would be canceled.<sup>23</sup> If the Retail order could trade with the aggressively priced displayed odd lot order, 50 shares would execute with the displayed odd lot order at \$10.13, and the remaining 50 shares would execute with the Midpoint Peg order at \$10.15. Allowing the Retail order to match with the aggressively priced displayed odd lot order would offer greater price improvement for the 50 shares that matched at \$10.13.

Therefore, IEX is proposing to modify IEX Rules 11.232(a)(2) and (e)(2) to provide that Retail orders are only eligible to trade at the Midpoint Price, with the exception that Retail orders can also trade with an aggressively priced displayed odd lot order priced on the far side of the Midpoint Price. In other words, as proposed, a Retail order to sell (buy) can match with any order to buy (sell) at the Midpoint Price or a displayed odd lot order to buy (sell) priced at or between the NBO (NBB) and the Midpoint Price.

IEX notes that this proposed rule change is consistent with the rules of the other exchanges with retail price improvement programs, none of which restrict their retail orders from only executing at the Midpoint Price.<sup>24</sup>

IEX is also proposing a conforming amendment to Rule 11.232(e)(3) to reflect that an aggressively priced displayed odd lot order will execute before any non-displayed Midpoint Price orders. In addition, IEX is proposing to add Example 4 at the end of Rule 11.232, to demonstrate how an aggressively priced displayed odd lot order will trade with

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<sup>23</sup> See IEX Rule 11.230(a) (a non-executable, non-routable order will be canceled).

<sup>24</sup> See NYSE Rule 7.44(a)(3); Cboe BYX Rule 11.24 (a)(2); Nasdaq BX Rule 4702(b)(6)(A).

a Retail order before the Retail order matches with any non-displayed Midpoint Price orders.

Finally, IEX is proposing to correct two typographical errors: add a missing “\$” in three places in Examples 1, 2, and 3; and correct the reference in Example 3, so it cites IEX Rule 11.220(a)(c)(vii) instead of Rule 11.220(a)(c)(viii).<sup>25</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>26</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>27</sup> 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 to allow Retail orders to trade with an aggressively priced displayed odd lot order is consistent with the protection of investors and the public interest because it is designed to increase the opportunities for retail investors to obtain price improvement.

Furthermore, as discussed in the Purpose section, IEX believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to further incentivize the entry of additional Retail orders and displayed odd lot orders on IEX by providing the opportunity for Retail orders to obtain greater price improvement and additional execution opportunities against displayed odd lot orders,

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<sup>25</sup> See supra note 13 (renumbering Rule 11.220(a)(c)(viii) as Rule 11.220(a)(c)(vii)).

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

while offering increased execution opportunities to displayed odd lot orders. Moreover, because displayed odd lots can result from displayed limit orders of more than odd lot size, the Exchange believes that the proposed rule change is also designed to incentivize the entry of displayed limit orders generally by providing such increased execution opportunities to displayed odd lot orders. IEX believes that, to the extent the proposed rule change is successful in incentivizing the entry of additional Retail orders and displayed odd lot and limit orders on IEX it will provide increased liquidity on the Exchange to the benefit of all market participants, thereby supporting the purposes of the Act 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.

Additionally, IEX believes that the proposed corrections to IEX Rule 11.232 further the purposes of the Act because they will provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion of any market participants. Specifically, the proposed typographical fixes will prevent any confusion to market participants about the application of those examples, provide clarity, and reduce any possible confusion to 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, and as discussed in the Statutory Basis section,

the proposal is designed to enhance IEX's competitiveness with other markets by further incentivizing the entry of additional displayed odd lot and limit orders on IEX by providing additional execution opportunities for displayed odd lot orders and offering increased price improvement to Retail orders, thereby increasing the overall liquidity profile of the Exchange to the benefit of all market participants. IEX also believes that conforming the Exchange's treatment of Retail orders with that of other exchanges with retail price improvement programs would promote intermarket competition for increasingly sought-after retail investor orders, to the benefit of retail customers in particular, and the market as a whole.

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. While only Members approved by the Exchange to be RMOs can submit Retail orders to the Exchange, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders. Further, any Member can submit a displayed odd lot or limit order and would therefore benefit if aggressively priced displayed odd lot orders have more opportunities to execute because they can now trade with Retail orders.

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)<sup>28</sup> of the Act and Rule 19b-4(f)(6)<sup>29</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>30</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>31</sup> 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. The Exchange has respectfully requested that the Commission waive the 30-day operative delay so that IEX can implement the proposed rule change concurrently with implementation of its displayed odd lot rule filing which is anticipated within the next several weeks. IEX believes that synchronizing the timing for implementation of the proposed rule change with the displayed odd lot rule filing implementation will avoid confusion to market participants as to how Retail orders interact with displayed odd lot orders priced more aggressively than the Midpoint Price.

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

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

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)<sup>32</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2021-03 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2021-03. 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 the submission, all subsequent

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<sup>32</sup> 15 U.S.C. 78s(b)(2)(B).

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 Section, 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 IEX's principal office and on its Internet website at [www.iextrading.com](http://www.iextrading.com). 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-2021-03 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.<sup>33</sup>

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<sup>33</sup> 17 CFR 200.30-3(a)(12).



Exhibit 5 – Text of Proposed Rule Change

Proposed new language is underlined; proposed deletions are in brackets.

CHAPTER 11. TRADING RULES

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Rule 11.232. Retail Price Improvement Program

(a) Definitions.

(1) No Change.

(2) “Retail order” has the meaning specified in IEX Rule 11.190(b)(15) and will operate in accordance with paragraph (e) of this Rule 11.232. A Retail order must be a Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK, and is only eligible to trade at the Midpoint Price, except that a Retail order to buy (sell) is also eligible to trade against a displayed odd lot to sell (buy) priced at or between the NBB (NBO) and the Midpoint Price.

(3) No Change.

(b)-(d) No Change.

(e) Priority and Order Execution.

(1) No change.

(2) Retail orders shall seek to execute upon entry into the System at the Midpoint Price, except that a Retail order to buy (sell) may also seek to execute against a displayed odd lot to sell (buy) priced at or between the NBB (NBO) and the Midpoint Price.

(3) Retail orders shall execute against orders resting on the Order Book in price/time priority in accordance with IEX Rule 11.230 subject to the following:

(A) A Retail order to buy (sell) shall execute upon entry against sell (buy) orders resting on the Order Book in the following order:

(i) displayed sell (buy) orders at the NBO (NBB) during a locked or crossed market;

(ii) displayed sell (buy) odd lot orders priced to trade between the NBB (NBO) and the MidPoint Price.

(iii) nondisplayed orders priced to trade at the Midpoint Price;

(iv~~[ii]~~) Retail Liquidity Provider orders priced to trade at the Midpoint Price.

Examples of priority and order allocation are as follows:

NBBO for security ABC is \$10.00 — \$10.10. It is not a period of quote instability as defined in Rule 11.190(g).

User 1 enters a Retail Liquidity Provider order to buy ABC at \$10.05 for 500 shares

User 2 then enters an unpriced Discretionary Peg order to buy 500 shares of ABC

User 3 then enters a Midpoint Peg order to buy 500 shares of ABC at \$10.04

Example 1: Retail Member Organization enters a Retail order to sell 800 shares of ABC. The order will first execute against the full size of User 2's buy order, and then execute against 300 shares of User 1's buy order, at which point the entire size of the Retail order to sell 800 shares is depleted. In this example the Retail order does not execute against User 3's buy order because the order is not priced to execute at \$10.05, the current Midpoint Price.

Example 2: Assume the same facts above, except that User 2's unpriced Discretionary Peg order to buy ABC is for 100 shares. The incoming Retail order to sell 800 shares executes first against User 2's buy order for 100 shares at \$10.05, then against User 1's buy order for 500 shares at \$10.05. The Retail order still does not execute against User 3's buy order because the order is not priced to execute at \$10.05, the current Midpoint Price. The Retail order is filled for 600 shares and the balance of 200 shares is cancelled back to the Retail Member Organization.

Example 3: Assume the same facts as Example 1, except that User 3 enters a nondisplayed limit order to buy 300 shares of ABC at \$10.05. The incoming Retail order to sell 800 shares executes first against User 3's order for 300 shares (because it has priority over User 2's Discretionary Peg order pursuant to IEX Rule 11.220(a)(C)(vii[i])) and then against User 2 for the remaining 500 shares, completing the Retail order's 800 share quantity. User 1's buy orders is not executed because it is ranked behind Users 2 and 3.

Example 4: Assume the same facts as Example 1, except that User 3 enters a displayed odd lot limit order to buy 50 shares of ABC at \$10.06. The incoming Retail order to sell 800 shares executes first against User 3's order for 50 shares at \$10.06, then against User 2's buy order for 500 shares at \$10.05, and then against User 1's buy order for the remaining 250 shares at \$10.05, completing the Retail order's 800 share quantity.

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