

Required fields are shown with yellow backgrounds and asterisks.

Filing by Investors' Exchange LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input 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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

Description

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

Proposed rule change to establish a Retail Price Improvement Program.

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 *	Last Name *
Claudia	Crowley
Title *	
Chief Regulatory Officer	
E-mail *	
claudia.crowley@iextrading.com	
Telephone *	Fax
(646) 343-2041	

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	06/20/2019	Chief Regulatory Officer
By	Claudia Crowley	<div style="border: 1px solid black; width: 100%; height: 30px;"></div>
	(Name *)	

claudia.crowley@iextrading.com

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 *

Add Remove View

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 *

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, 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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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”),¹ and Rule 19b-4 thereunder,² Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to establish a Retail Price Improvement Program.

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
Regulation Counsel
Investors Exchange LLC
646-343-2034

¹ 15 U.S.C. 78s(b)(1).

² 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

Background

IEX proposes to adopt new IEX Rule 11.232 to establish a Retail Price Improvement Program (“Retail Program”). As proposed, the Retail Program is designed to provide retail investors with meaningful price improvement opportunities by executing at the Midpoint Price³ such that Members will be incentivized to add midpoint orders to the Exchange above and beyond the already existing and significant midpoint liquidity at IEX.

As Commission Chairman Jay Clayton noted in a recent speech, forty-three million U.S. households hold a retirement or brokerage account, with \$3.6 trillion in balance sheet assets in 128 million customer accounts serviced by more than 2,800 registered broker-dealers.⁴ He also noted the importance of continued broad, long-term retail participation in our capital markets, and that retail investors count on the capital markets to fund major life events such as paying for their children’s higher education or funding their own retirements.⁵

Against this backdrop, the Retail Program is designed to provide retail investors with access to the Exchange’s already deep pool of midpoint liquidity by introducing a

³ 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).

⁴ See The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice, Chairman Jay Clayton, Commission (May 2, 2018), available at <https://www.sec.gov/news/speech/speech-clayton-2018-05-02>.

⁵ Id.

new mechanism for retail-oriented liquidity provision, thereby providing enhanced opportunities for meaningful price improvement at the Midpoint Price. The Exchange believes that introducing the Retail Program could provide retail investors with better execution quality than they are currently able to obtain through existing exchange and over-the-counter (“OTC”) order retail programs, by attracting counterparty liquidity to the Exchange from Members and their clients seeking to interact with retail liquidity.⁶ The Retail Program would therefore be consistent with the goals of the Commission to encourage markets that are structured to benefit ordinary investors,⁷ while facilitating order interaction and price discovery to the benefit of all market participants.

As proposed, through the Retail Program, the Exchange would create a new class of market participants, Retail Member Organizations (“RMOs”), which would be eligible to submit certain retail order flow (“Retail orders”) to the Exchange. Any Exchange Member would be permitted to provide price improvement to Retail orders in the form of interest that is priced to execute at the Midpoint Price, including through a new Retail Liquidity Provider (“RLP”) order that is only eligible to execute against a Retail order.

IEX is already among the largest exchanges when measuring the volume of executions at the Midpoint Price. Based on informal discussions with several Members, IEX believes that some of the orders sent to IEX today that seek to access this midpoint liquidity originate with retail customers. Furthermore, several IEX Members firms’ primary business is on behalf of retail clients, which indicates that at least some of IEX’s current midpoint executions result from incoming retail orders seeking price

⁶ See discussion *infra* on the desirability of interacting with retail liquidity.

⁷ See e.g., U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf (“Commission Strategic Plan”).

improvement compared to the NBBO, even if IEX does not currently have the means to identify the exact percentage. IEX therefore expects that the introduction of Retail and RLP orders will result in a balanced mix of retail brokerage firms and their wholesaling partners submitting Retail orders to IEX to access both IEX's existing midpoint liquidity and the additional midpoint liquidity IEX anticipates from the Retail Program.

If the Commission approves this proposed rule change, the Exchange will submit a separate proposal to amend its Price List in connection with the Retail Program. Under that proposal, the Exchange would initially not charge any fees for executions of either Retail orders or RLP orders.

Definitions

The Exchange proposes to adopt the following definitions under existing IEX Rule 11.190 (Orders and Modifiers) and proposed IEX Rule 11.232 (Retail Price Improvement Program). First, the term "Retail order" would be defined as an agency or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, which is submitted by a Retail Member Organization, designated with a "Retail order" modifier, and reflects trading interest of a natural person, with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market, and that does not originate from a trading algorithm or any other computerized methodology.⁸ An order from a natural person can include orders submitted on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that have been established for the benefit of an

⁸ See proposed Rule 11.190(15).

individual or group of related family members, provided that the order is submitted by an individual.⁹ Retail orders would either be Discretionary Peg or Midpoint Peg orders with a Time-in-Force of IOC or FOK, and would only be eligible to trade at the Midpoint Price.¹⁰

Second, the term “Retail Member Organization” (or “RMO”) would be defined as an IEX Member (or division thereof) that has been approved by the Exchange to submit Retail orders.¹¹

Finally, the term “Retail Liquidity Provider order” (or “RLP order”) would be defined as a Discretionary Peg order that is only eligible to execute against Retail orders through the execution process described in proposed Rule 11.232(e).¹²

Retail Member Organization Qualifications and Approval Process

Under proposed IEX Rule 11.232, any IEX Member (or a division thereof) could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. Any IEX Member that wishes to obtain RMO status would be required to submit: (1) an application form; (2) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant’s order flow;¹³ and (3) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail orders would meet the qualifications under proposed IEX Rule 11.232.

An RMO would be required to have written policies and procedures reasonably

⁹ Id.

¹⁰ See proposed Rule 11.232(a)(2). As with all pegged orders, Retail orders may only trade during the Regular Market Session. See IEX Rule 11.190(a)(3)(E).

¹¹ See proposed Rule 11.232(a)(1).

¹² See proposed Rule 11.232(a)(3).

¹³ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the Member’s retail order flow, and any other documentation and information requested by the Exchange.

designed to assure that it will only designate orders as Retail orders if all requirements of a Retail order are met. Such written policies and procedures must require the IEX Member to: (i) exercise due diligence before entering a Retail order to assure that entry as a Retail order is in compliance with the requirements of this Rule; and (ii) monitor whether orders entered as Retail orders meet the applicable requirements. If an RMO does not itself conduct a retail business but routes Retail orders on behalf of another broker-dealer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail orders meet the definition of a Retail order. The RMO must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail orders that entry of such orders as Retail orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail order flow routed on behalf of such other broker-dealers meets the applicable requirements.¹⁴

After an applicant submits the RMO application form, supporting documentation, and attestation, the Exchange would notify the applicant of the Exchange's decision in writing. A disapproved applicant would be able to request an appeal of such disapproval by the Exchange and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. Additionally, an RMO may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of Retail Member Organization to Abide by Retail Order Requirements

The proposed Retail Program also sets forth procedures for addressing an RMO's

¹⁴ FINRA, on behalf of the Exchange, will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

failure to abide by the Retail Program's Retail order requirements. If an RMO designates orders submitted to the Exchange as Retail orders, and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in proposed IEX Rule 11.232(a)(2), the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member.

Appeal of Disapproval or Disqualification

Proposed IEX Rule 11.232(d) would provide a mechanism through which Members could appeal either the Exchange's disapproval of its application to become an RMO or the Exchange's disqualification of a previously-approved RMO from the Retail Program. If a Member disputes the Exchange's decision to disapprove it as an RMO under proposed IEX Rule 11.232(b) or disqualify it as an RMO under IEX Rule 11.232(c), the Member may request, within five business days after notice of the decision is issued by the Exchange, that the RMO Panel ("RMO Panel") review the decision to determine if it was correct.

The RMO Panel shall consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Exchange's Chief Operating Officer ("COO"). The RMO Panel shall review the facts and render a decision within the time frame prescribed by the Exchange. The RMO Panel may overturn or modify an action taken by the Exchange under proposed IEX Rule 11.232. A determination by the RMO Panel shall constitute final action by the Exchange.

Additionally, under the proposed Retail Program, any IEX Member that was either disapproved as an RMO under proposed IEX Rule 11.232(b) or disqualified as an

RMO under IEX Rule 11.232(c) could reapply for RMO status a minimum of 90 days after the date it receives its disapproval or disqualification notice from the Exchange.

Priority and Order Allocation

As proposed, Retail Liquidity Provider orders in the same security would be ranked and allocated according to price then time of entry into the System.¹⁵ Retail orders would seek to execute upon entry into the System at the Midpoint Price.¹⁶ Retail Liquidity Provider orders would interact with Retail orders as follows:

A Retail order will seek to execute upon entry into the System at the Midpoint Price against orders resting on the Order Book in price/time priority in accordance with Rule 11.230, subject to the following:

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

- (1) displayed sell (buy) orders at the NBO¹⁷ (NBB) during a locked or crossed market;
- (2) non-displayed orders priced to trade at the Midpoint Price;
followed by
- (3) Retail Liquidity Provider orders priced to trade at the Midpoint Price.

The following examples illustrate how IEX would handle orders under this proposed new rule:

Assume the following facts:

¹⁵ See proposed Rule 11.132(e)(1).

¹⁶ See proposed Rule 11.132(e)(2).

¹⁷ The term “NBO” shall mean the national best offer, and the term “NBB” shall mean the national best bid, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

- (1) NBBO for security ABC is \$10.00 — \$10.10.¹⁸
- (2) User 1¹⁹ enters a Retail Liquidity Provider order to buy ABC at \$10.05 for 500 shares.
- (3) User 2 then enters an unpriced Discretionary Peg order to buy 500 shares of ABC.
- (4) User 3 then enters a Midpoint Peg order to buy 500 shares of ABC at \$10.04

Example 1: RMO 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 RMO.

Example 3: Assume the same facts as Example 1, except that User 3 enters a non-displayed limit order to buy 300 shares of ABC at 10.05. The incoming Retail order to

¹⁸ For purposes of these examples, assume it is not a period of quote instability as set forth in IEX Rule 11.190(g).

¹⁹ The term "User" shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130.

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)(viii)) and then against User 2 for the remaining 500 shares, completing the Retail order's 800 share quantity. User 1's buy order is not executed because it is ranked behind Users 2 and 3.

Implementation

The Exchange proposes that all securities traded on the Exchange would be eligible for inclusion in the Retail Program. Assuming that the Commission approves this proposed rule change, the Exchange will implement the proposed rule change within 90 days of approval and provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

Comparison to Existing Retail Programs

As described above, the proposed Retail Program is a simple approach designed to provide retail investors with the opportunity for meaningful price improvement (by executing at the Midpoint Price), by attracting counterparty liquidity to the Exchange from Members and their clients seeking to interact with retail liquidity.

IEX understands that many professional market participants, such as market makers, view interacting with orders of retail investors as more desirable than interacting with orders of other professional market participants. For example, as the Commission staff noted in a 2016 memorandum to the Equity Market Structure Advisory Committee ("EMSAC Memorandum"), "[m]arket makers are interested in retail customer order flow because retail investors are, on balance, less informed than other traders about short-term price movements...[and t]rading against retail customer order flow enables market makers to avoid adverse selection by informed professional traders and to more reliably

profit from market-making activity.” The EMSAC Memorandum also described that “[a]fter market makers internalize the relatively uninformed retail customer order flow, the informed order flow that remains is left for the exchanges to absorb...[and that t]ypically, dealers that pay to receive retail customer order flow will guarantee executions of that order flow with some amount of average price improvement over the national best bid or offer (“NBBO”) and with a separate payment to retail brokers for directing customer orders to them.”²⁰

Consistent with the EMSAC Memorandum’s conclusions, and based on informal discussions with market participants and the knowledge and experience of its staff, IEX believes that market makers and other sophisticated market participants generally value interacting with retail orders because they are smaller and not likely to be part of a larger parent order that can move a stock price, causing a loss to the market maker. For example, a retail order to buy 200 shares is probably just an order for 200 shares. In contrast, a 200-share buy order from a more sophisticated institutional market participant may be part of a 100,000-share parent order. If the market maker sells to the 200-share child order, execution of the balance of the parent order may move the market up above the price at which the market maker sold.

The proposed rule change leverages IEX’s existing market structure to provide enhanced price improvement opportunities for retail customers by incentivizing Members and their clients to provide liquidity to the orders of retail investors. The IEX Retail Program is similar to NYSE Rule 107C, governing NYSE’s Retail Liquidity Program

²⁰ See January 26, 2016 Memorandum entitled “Certain Issues Affecting Customers in the Current Equity Market Structure” from the staff of the Commission’s Division of Trading and Markets, available at <https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-emsac-012616.pdf>.

(“NYSE RLP”) which was recently approved on a permanent basis by the Commission.²¹

The proposed rule change is similar to the NYSE RLP with a few key distinctions, as described below. The proposed Retail Program is also similar to the Commission-approved retail pilot programs of NYSE Arca,²² Cboe BYX²³ and Nasdaq BX²⁴ (“Current Retail Pilot Programs”), also with several differences as highlighted below.

- **More price improvement for retail investors.** The proposed rule change would provide more price improvement for retail customers than the NYSE RLP, because a Retail order on IEX could only execute at the Midpoint Price, as opposed to the minimum \$.001 price improvement that the NYSE RLP can provide.²⁵ IEX believes that its approach is preferable because executed Retail orders in stocks priced equal to or greater than \$1.00 will receive a minimum of \$.005 in price improvement (half of the smallest bid/ask spread) compared to lesser amounts in the NYSE RLP²⁶ and the amount of price improvement is transparent by rule, rather than being dependent on the pricing of the contra-side non-displayed order. IEX’s proposed Retail Program would also provide greater

²¹ See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR-NYSE-2018-28) (approving NYSE RLP on a permanent basis). See also SR-NYSE-2019-26, Securities Exchange Act Release No. 85930 (May 23, 2019) adopting substantially similar rules for securities traded on the NYSE Pillar Platform on an immediately effective basis.

²² See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) (approving NYSE Arca retail pilot program).

²³ See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019) (approving Cboe BYX retail pilot program).

²⁴ See Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR-BX-2014-048) (approving NASDAQ BX retail pilot program).

²⁵ The Exchange is not seeking an exemption under Rule 612 of Regulation NMS with respect to the “Sub-Penny Rule” because it will not accept or rank orders priced greater than \$1.00 per share in an increment smaller than \$0.01.

²⁶ See supra note 21, at 5759 (“Table 1”), which reflects average price improvement of \$0.0014 - \$0.0019 during the period January 2016 – December 2017. The NYSE RLP is limited to securities priced equal to or greater than \$1.00.

price improvement than the Current Retail Pilot Programs because those three retail pilot programs also allow for execution at sub-penny prices, as opposed to the IEX proposal which would only allow for execution at the Midpoint Price.

- **RLP orders available to all Members.** Unlike the NYSE RLP, IEX's Retail Program will not limit or discriminate among its Members and their clients, and will allow all Members and their clients to submit RLP orders that seek to interact and provide price improvement to incoming Retail orders. Because the order type is designed to create as much new price improvement opportunity for retail investors as possible, IEX does not believe that there is any reason to limit usage to a privileged group of Members. This aspect of the IEX Retail Program is similar to the Current Retail Pilot Programs, which also do not limit which Members can submit specialized retail liquidity providing orders that only interact with retail orders.
- **No dissemination of data identifying Retail orders on proprietary data feeds.** IEX would not disseminate when an RLP order is on the order book on any proprietary data feeds, as opposed to the NYSE RLP and the Current Retail Pilot Programs, each of which disseminates retail liquidity providing orders on its proprietary data feeds. IEX believes that such dissemination could create unnecessary complexity, as well as a skewed and unduly limited view of the liquidity available to trade with Retail orders. RLP orders on IEX will simply be more dark liquidity priced to execute at the Midpoint Price. As described above, Retail orders will be able to execute against any order priced to execute at the Midpoint Price and RLP orders are just additive. Even in the absence of resting

RLP orders, a Retail order could execute against existing order types. Thus, there will be no impact on consolidated or proprietary market data feeds, no flickering disseminations, and no inadvertent incentive to only route Retail orders to IEX when the presence of RLP order interest is being disseminated.

- **Uniform execution priority.** Retail orders on IEX would execute against available contra-side interest in a uniform manner, with RLP orders having lower priority than other liquidity providing orders priced to trade at the Midpoint Price. In contrast, the NYSE RLP and Current Retail Pilot Programs enable retail liquidity providing orders to gain higher priority than other liquidity providing orders by virtue of the ability to provide subpenny pricing, which results in immaterial price improvement. IEX believes that its approach is superior because it would provide for meaningful price improvement without complicating the market with orders priced and ranked based on immaterial, nonstandard subpenny increments. IEX also believes that it is appropriate for RLP orders to have lower priority than other orders priced to trade at the Midpoint Price because RLP orders are only available to Retail orders.
- **No exception relief needed for tick size trading increments.** The IEX Retail Program will operate in accordance with existing tick size trading increments. IEX is not requesting any exemptive relief in order to enable ranking and/or pricing orders in otherwise impermissible increments. As described above, this approach avoids enabling immaterial price improvement, as well as the concomitant complexity that such an approach can lead to.
- **No impact on order book priority.** IEX's approach will also not impact order

book priority, as is the case with the proposal by Cboe EDGX Exchange, Inc to introduce retail order priority.²⁷

The Exchange believes that the above distinctions between its proposed rule change and the NYSE RLP and Current Retail Pilot Programs reflect a simple approach designed to provide better execution quality to retail investors, at a lower cost.

Modification to Rule 11.340

Finally, the Exchange proposes to delete Rule 11.340(d)(4), which currently states in relevant part that the Exchange does not operate a retail liquidity program. If the Commission approves the proposed Retail program, the text in Rule 11.340(d)(4) would no longer be accurate, and should therefore be deleted.

b. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5),²⁹ 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 these principles because it is designed to increase competition among execution venues and offer the potential for meaningful price improvement to orders of retail investors, including through incentivizing market

²⁷ See Securities Exchange Act Release No. 85482 (April 2, 2019), 84 FR 13729 (April 5, 2019) (SR-CboeEDGX-2019-012) (proposing rule change to give order book priority for equity orders submitted on behalf of retail investors).

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

participants to provide additional liquidity to execute against the orders of retail investors.

As discussed in the Purpose section, IEX's proposed Retail Program is a simple, transparent approach designed to provide opportunities for meaningful price improvement for Retail orders by incentivizing additional non-displayed resting interest priced to trade at the Midpoint Price.

Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. And IEX understands that broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Retail Program would differentiate among its Members, the Exchange believes that such differentiation is not unfairly discriminatory but rather is designed to promote a competitive process for retail executions while providing retail investors with the potential to receive meaningful price improvement. There is ample precedent for differentiation of retail order flow in the existing approved programs of other national securities exchanges.³⁰ As the Commission has recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.³¹

The Commission consistently highlights the need to ensure that the U.S. capital

³⁰ See supra notes 21, 22, 23, and 24.

³¹ See supra note 21 at 40679.

markets are structured with the interests of retail investors in mind, and recently highlighted its focus on the “long-term interest of Main Street Investors” as its number one strategic goal for fiscal years 2018 to 2022. The Exchange believes its Retail Program would serve the retail investing public by providing them with the opportunity for meaningful price improvement on eligible trades.

The Exchange notes that several other national securities exchanges, including NYSE as described herein, have for several years operated retail liquidity programs that include market segmentation whereby retail orders receive execution priority in specified circumstances.³² A NYSE rule filing to make its retail liquidity pilot program permanent was recently approved by the Commission notwithstanding market segmentation. IEX understands that these programs were designed to promote competition for retail order flow among execution venues, most of which continues to be executed in the OTC markets rather than on exchanges.³³ Similarly, IEX’s Retail Program is designed to provide an additional competitive alternative for retail orders. IEX believes that it is appropriate to provide incentives to bring more retail order flow to a public exchange. As described in the Purpose section, these incentives include the opportunity for retail orders to receive meaningful price improvement, while also providing all Members with the opportunity to execute against such orders.

IEX believes that the proposed distinctions between its Retail Program and the NYSE RLP, as well as similar Current Retail Pilot Programs, will enhance competition among exchange venues. IEX further believes that this structure is designed to foster

³² See NYSE Rule 107C, NYSE Arca Equities Rule 7.44, Cboe Rule 11.24, and NASDAQ BX Rule 4780.

³³ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, 40679 (July 10, 2012) (SR-NYSE-2011-55) (order approving NYSE RLP pilot program)

competition among exchanges and OTC markets, as well as to protect investors and the public interest, and is therefore consistent with the Act. IEX also believes that the segmentation in its Retail Program, as proposed, is less significant than in the NYSE RLP and the Current Retail Pilot Programs for two reasons. First, non-RLP orders priced to execute at the Midpoint Price have higher priority than RLP order. And second, any Member, or clients thereof, can enter an RLP order. This structure is designed to facilitate a broader interaction between Retail orders and those of all IEX market participants, rather than a more constrained approach whereby retail orders interact primarily with a segmented pool of liquidity providing orders of privileged members.

IEX believes that its proposed eligibility criteria for submission of a Retail order are consistent with the Act in that they are designed to provide reasonable assurance that such orders are on behalf of actual retail investors, as opposed to professional market participants. In this regard, IEX notes that the definition of a Retail order clearly specifies that it must reflect the trading interest of a natural person (including orders placed on behalf of accounts held in a corporate legal form such as Individual Retirement Accounts, so long as the order is submitted by an individual) without algorithmic or computerized methodology changes to the order (except to change a market order to a marketable limit order). Further, as proposed, a Retail order can only be submitted by a Member that has been approved by IEX as an RMO, based upon appropriate criteria that provide reasonable assurances to IEX that the RMO will only identify orders as Retail orders in conformance with applicable IEX rules, as proposed. The proposed criteria and approval process are substantially similar to the definition of Retail Order in NYSE Rule 107C(a)(3) as well as comparable provisions of the rules of Current Retail Pilot

Programs. The definition also includes additional clarifying text to explicitly include orders placed on behalf of accounts held in a corporate legal form such as Individual Retirement Accounts so long as the order is submitted by an individual, which is based on the definition of “Designated Retail Order” in the Nasdaq Stock Market (“Nasdaq”) pricing schedule.³⁴ Thus, IEX does not believe that its proposed criteria and approval process for submission of Retail orders raises any new or novel issues not already considered by the Commission.

IEX also believes that the proposed RMO approval, disapproval, and disqualification rules are consistent with the Act in that they provide a fair process for determining whether a Member qualifies as an RMO, as well as for appeals of denials thereof. These processes are also substantially similar to comparable provisions in NYSE Rule 107C(b) and the rules of Current Retail Pilot Programs.

The Exchange further believes that it is consistent with the Act to structure its proposed Retail Program such that 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. As described above, the Exchange has structured its proposed Retail Program to provide that Retail orders will trade at the Midpoint Price, so that such orders receive meaningful price improvement. Further, and as discussed in the Purpose section, only permitting Retail orders to be executed at the Midpoint Price is designed to be a simple approach that does not introduce unnecessary complexity to the order entry and execution process on IEX. All orders, including Retail orders, will continue to be priced and ranked in standard increments and pursuant to existing priority.

³⁴ See Equity 7, Section 118.

The Exchange believes that introducing a program that provides and encourages additional liquidity and price improvement to Retail orders is appropriate because retail investors are typically less sophisticated than professional market participants and therefore would not have the type of technology to enable them to compete with such market participants. Therefore, the Exchange believes that it is consistent with the public interest and the protection of investors to provide retail investors with these enhanced opportunities.

In addition, the Exchange believes that providing for execution of Retail orders only at the Midpoint Price is also designed to facilitate Members' compliance with their best execution obligations when acting as agent on behalf of a Retail order.³⁵ Specifically, as noted in FINRA Regulatory Notice 15-46 (Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets), when conducting its review of execution quality in any security, a firm should consider, among other things, whether it could obtain mid-point price improvement on one venue versus less price improvement on another venue.³⁶

The Exchange also believes that specifying that a Retail order must be Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK is designed to maximize the opportunity for such orders to be executed on IEX and receive such price improvement against resting interest on IEX priced to trade at the Midpoint Price. Thus, IEX believes that this approach is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and

³⁵ All IEX Members that handle customer orders as agent are required to be FINRA members, and therefore are subject to FINRA guidance. See 17 CFR 240.15b9-1(a).

³⁶ See FINRA Regulatory Notice 15-46, endnote 25 available at: https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

further the investor protection and public interest objectives of Section 6(b) of the Act, by establishing a structure that is designed to facilitate the provision of meaningful price improvement for orders of retail investors.

The Exchange believes that its priority and order execution approach for the Retail Program is consistent with the Act. As discussed in the Purpose section, the Exchange understands that a large majority of orders from retail investors are executed in the OTC market, and exchange retail programs have not attracted a significant volume.³⁷ While there are likely a variety of reasons for this, the IEX Retail Program is designed to provide meaningful incentives for Members to send orders of retail investors to IEX as well as for market participants to provide liquidity to Retail orders. Currently, retail orders are routed across different wholesalers and dark pools. The Exchange believes that creating an exchange retail program specifically designed to provide midpoint executions for retail investors will help grow that overall opportunity for exchange price improvement and introduce additional, healthy competition to the benefit of the retail investor.

As discussed in detail above, the Exchange believes that the opportunity to obtain meaningful price improvement for Retail orders should operate as a powerful incentive for Members to send retail orders to IEX. Based on publicly available information, IEX notes that other exchange retail programs provide less price improvement overall,³⁸ and believes that OTC retail programs guarantee to execute retail orders at prices better than

³⁷ See supra note 21, at 5762 (“Although the Program provides the opportunity to achieve significant price improvement, the Program has not generated significant activity.... The Program’s share of NYSE volume during [in 2016-17] was below 0.4%”).

³⁸ See e.g., supra note 26.

the NBBO but not necessarily at the midpoint of the NBBO.³⁹ While IEX typically has a deep pool of non-displayed liquidity priced to execute at the Midpoint Price, a key aspect of IEX's Retail Program is to further incentivize Members and their clients to enter additional non-displayed interest, including interest that will only trade with Retail orders. As discussed in the Purpose section, IEX believes that many professional market participants view interacting with orders of retail investors as desirable. Further, IEX understands that some market participants may be hesitant to enter resting interest to trade in public markets because of the risk of being subjected to latency arbitrage by more sophisticated market participants leveraging fast proprietary market data feeds and connectivity along with predictive strategies to chase short-term price momentum and successfully target resting orders at unstable prices. IEX also believes that retail investors are unlikely to have such technological advantages and as a result, certain market participants, including buy-side and other fundamental investors, may be more willing to enter resting interest to trade on a public exchange, and to allow that interest to rest for a longer period of time, if they were assured that their orders would not be subject to latency arbitrage by more sophisticated market participants. As the stock and exchange trading product values fluctuate throughout the day, professional market participants will be able to utilize the RLP order type to provide liquidity to Retail orders at times when they might otherwise be unwilling to do so because of the differences between Retail and non-Retail orders described above. These market participants would have the additional flexibility to submit both RLP and non-RLP mid-point orders, and switch between them based on intraday values, resulting in enhanced mid-point liquidity

³⁹ See supra note 20.

throughout the trading day.

Thus, IEX believes that by providing an order type that only executes against retail orders, other market participants may be incentivized to enter additional resting interest on IEX. Accordingly, the Exchange further believes that it is consistent with the Act for RLP orders to only execute against Retail orders so as to incentivize the entry of RLP orders and thereby provide meaningful price improvement to Retail orders. In addition, to the extent that the RLP order structure is successful in incentivizing the entry of resting interest by buy-side and other fundamental investors, it would reduce unnecessary intermediation of Retail orders, which is consistent with the purposes of Section 6(b)(5) of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system as well as with Section 11A of the Act in that it is designed to provide enhanced opportunities for investor orders to be executed without the participation of a dealer, as described above.⁴⁰

At the same time, the Exchange believes that, given the benefit of trading only with Retail orders, it is consistent with the Act for RLP orders to have lower execution priority than other orders priced to trade at the Midpoint Price. IEX believes that a healthy market includes interaction between a diverse array of market participants and is not seeking to establish a segmented pool within the Exchange. Accordingly, IEX believes that providing other orders priced to trade at the Midpoint Price with higher priority is an appropriate balancing of these competing considerations.

Finally, the Exchange believes that the deletion of Rule 11.340(d) pertaining to

⁴⁰ 15 U.S.C. 78k-1(a)(1)(c)(v).

the expired Tick Size Pilot Plan,⁴¹ which currently states in relevant part that the Exchange does not operate a retail liquidity program is consistent with the Act because, if the Commission approves the proposed rule change, the provision will be inaccurate. Notwithstanding that the Tick Size Pilot expired at the close of trading on September 28, 2018, continued inclusion of this provision could engender confusion on the part of Members and other market participants as to IEX's Retail Program. Consequently, the Exchange believes that it is consistent with the Act to delete the provision to ensure accuracy and consistency in IEX's rules.

In sum, the Exchange submits that its proposed Retail Program is a simple approach designed to provide an opportunity for retail customers' orders to receive meaningful price improvement in a manner consistent with the approved retail programs of other exchanges, but without certain complexities that IEX believes are unnecessary for its program. Thus, IEX believes that the proposed Retail Program is consistent with the Act in that it is designed 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. Further, IEX does not believe that the proposal raises any new or novel issues not already considered by the Commission.

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. To the contrary, IEX believes that introducing a Retail Program would continue to enhance competition and execution quality for retail order flow among

⁴¹ See IEX Trading Alert #2018-035 (Tick Size Pilot Program Expiration), available at <https://iextrading.com/alerts/#/35>.

execution venues and contribute to the public price discovery process.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

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 orders submitted by some Members will be treated differently, as described in the Purpose section, 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 enter an RLP order.

Finally, the Exchange does not believe that deleting Rule 11.340(d), pertaining to the expired Tick Size Pilot Plan, will impose any burden on competition since it is merely designed to remove a conflicting rule provision.

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)

Not applicable.

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

The proposed rule change is based in part on NYSE Rule 107C as described in the Purpose section.

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

Not applicable.

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-2019-05)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing of Proposed Rule Change to Establish a Retail Price Improvement Program.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ 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,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to establish a Retail Price Improvement Program.

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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 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 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

Background

IEX proposes to adopt new IEX Rule 11.232 to establish a Retail Price Improvement Program (“Retail Program”). As proposed, the Retail Program is designed to provide retail investors with meaningful price improvement opportunities by executing at the Midpoint Price⁶ such that Members will be incentivized to add midpoint orders to the Exchange above and beyond the already existing and significant midpoint liquidity at IEX.

As Commission Chairman Jay Clayton noted in a recent speech, forty-three million U.S. households hold a retirement or brokerage account, with \$3.6 trillion in balance sheet assets in 128 million customer accounts serviced by more than 2,800 registered broker-dealers.⁷ He also noted the importance of continued broad, long-term

⁶ 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).

⁷ See The Evolving Market for Retail Investment Services and Forward-Looking Regulation —

retail participation in our capital markets, and that retail investors count on the capital markets to fund major life events such as paying for their children's higher education or funding their own retirements.⁸

Against this backdrop, the Retail Program is designed to provide retail investors with access to the Exchange's already deep pool of midpoint liquidity by introducing a new mechanism for retail-oriented liquidity provision, thereby providing enhanced opportunities for meaningful price improvement at the Midpoint Price. The Exchange believes that introducing the Retail Program could provide retail investors with better execution quality than they are currently able to obtain through existing exchange and over-the-counter ("OTC") order retail programs, by attracting counterparty liquidity to the Exchange from Members and their clients seeking to interact with retail liquidity.⁹ The Retail Program would therefore be consistent with the goals of the Commission to encourage markets that are structured to benefit ordinary investors,¹⁰ while facilitating order interaction and price discovery to the benefit of all market participants.

As proposed, through the Retail Program, the Exchange would create a new class of market participants, Retail Member Organizations ("RMOs"), which would be eligible to submit certain retail order flow ("Retail orders") to the Exchange. Any Exchange Member would be permitted to provide price improvement to Retail orders in the form of interest that is priced to execute at the Midpoint Price, including through a new Retail

Adding Clarity and Investor Protection while Ensuring Access and Choice, Chairman Jay Clayton, Commission (May 2, 2018), available at <https://www.sec.gov/news/speech/speech-clayton-2018-05-02>.

⁸ *Id.*

⁹ See discussion *infra* on the desirability of interacting with retail liquidity.

¹⁰ See e.g., U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf ("Commission Strategic Plan").

Liquidity Provider (“RLP”) order that is only eligible to execute against a Retail order.

IEX is already among the largest exchanges when measuring the volume of executions at the Midpoint Price. Based on informal discussions with several Members, IEX believes that some of the orders sent to IEX today that seek to access this midpoint liquidity originate with retail customers. Furthermore, several IEX Members firms’ primary business is on behalf of retail clients, which indicates that at least some of IEX’s current midpoint executions result from incoming retail orders seeking price improvement compared to the NBBO, even if IEX does not currently have the means to identify the exact percentage. IEX therefore expects that the introduction of Retail and RLP orders will result in a balanced mix of retail brokerage firms and their wholesaling partners submitting Retail orders to IEX to access both IEX’s existing midpoint liquidity and the additional midpoint liquidity IEX anticipates from the Retail Program.

If the Commission approves this proposed rule change, the Exchange will submit a separate proposal to amend its Price List in connection with the Retail Program. Under that proposal, the Exchange would initially not charge any fees for executions of either Retail orders or RLP orders.

Definitions

The Exchange proposes to adopt the following definitions under existing IEX Rule 11.190 (Orders and Modifiers) and proposed IEX Rule 11.232 (Retail Price Improvement Program). First, the term “Retail order” would be defined as an agency or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, which is submitted by a Retail Member Organization, designated with a “Retail order” modifier, and reflects trading interest of a natural person, with no change made to the terms of the

underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market, and that does not originate from a trading algorithm or any other computerized methodology.¹¹ An order from a natural person can include orders submitted on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual.¹² Retail orders would either be Discretionary Peg or Midpoint Peg orders with a Time-in-Force of IOC or FOK, and would only be eligible to trade at the Midpoint Price.¹³

Second, the term “Retail Member Organization” (or “RMO”) would be defined as an IEX Member (or division thereof) that has been approved by the Exchange to submit Retail orders.¹⁴

Finally, the term “Retail Liquidity Provider order” (or “RLP order”) would be defined as a Discretionary Peg order that is only eligible to execute against Retail orders through the execution process described in proposed Rule 11.232(e).¹⁵

Retail Member Organization Qualifications and Approval Process

Under proposed IEX Rule 11.232, any IEX Member (or a division thereof) could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. Any IEX Member that wishes to obtain RMO status would be

¹¹ See proposed Rule 11.190(15).

¹² Id.

¹³ See proposed Rule 11.232(a)(2). As with all pegged orders, Retail orders may only trade during the Regular Market Session. See IEX Rule 11.190(a)(3)(E).

¹⁴ See proposed Rule 11.232(a)(1).

¹⁵ See proposed Rule 11.232(a)(3).

required to submit: (1) an application form; (2) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow;¹⁶ and (3) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail orders would meet the qualifications under proposed IEX Rule 11.232.

An RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail orders if all requirements of a Retail order are met. Such written policies and procedures must require the IEX Member to: (i) exercise due diligence before entering a Retail order to assure that entry as a Retail order is in compliance with the requirements of this Rule; and (ii) monitor whether orders entered as Retail orders meet the applicable requirements. If an RMO does not itself conduct a retail business but routes Retail orders on behalf of another broker-dealer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail orders meet the definition of a Retail order. The RMO must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail orders that entry of such orders as Retail orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail order flow routed on behalf of such other broker-dealers meets the applicable requirements.¹⁷

After an applicant submits the RMO application form, supporting documentation, and attestation, the Exchange would notify the applicant of the Exchange's decision in

¹⁶ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by the Exchange.

¹⁷ FINRA, on behalf of the Exchange, will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

writing. A disapproved applicant would be able to request an appeal of such disapproval by the Exchange and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. Additionally, an RMO may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of Retail Member Organization to Abide by Retail Order Requirements

The proposed Retail Program also sets forth procedures for addressing an RMO's failure to abide by the Retail Program's Retail order requirements. If an RMO designates orders submitted to the Exchange as Retail orders, and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in proposed IEX Rule 11.232(a)(2), the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member.

Appeal of Disapproval or Disqualification

Proposed IEX Rule 11.232(d) would provide a mechanism through which Members could appeal either the Exchange's disapproval of its application to become an RMO or the Exchange's disqualification of a previously-approved RMO from the Retail Program. If a Member disputes the Exchange's decision to disapprove it as an RMO under proposed IEX Rule 11.232(b) or disqualify it as an RMO under IEX Rule 11.232(c), the Member may request, within five business days after notice of the decision is issued by the Exchange, that the RMO Panel ("RMO Panel") review the decision to determine if it was correct.

The RMO Panel shall consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the

Exchange's Chief Operating Officer ("COO"). The RMO Panel shall review the facts and render a decision within the time frame prescribed by the Exchange. The RMO Panel may overturn or modify an action taken by the Exchange under proposed IEX Rule 11.232. A determination by the RMO Panel shall constitute final action by the Exchange.

Additionally, under the proposed Retail Program, any IEX Member that was either disapproved as an RMO under proposed IEX Rule 11.232(b) or disqualified as an RMO under IEX Rule 11.232(c) could reapply for RMO status a minimum of 90 days after the date it receives its disapproval or disqualification notice from the Exchange.

Priority and Order Allocation

As proposed, Retail Liquidity Provider orders in the same security would be ranked and allocated according to price then time of entry into the System.¹⁸ Retail orders would seek to execute upon entry into the System at the Midpoint Price.¹⁹ Retail Liquidity Provider orders would interact with Retail orders as follows:

A Retail order will seek to execute upon entry into the System at the Midpoint Price against orders resting on the Order Book in price/time priority in accordance with Rule 11.230, subject to the following:

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

- (1) displayed sell (buy) orders at the NBO²⁰ (NBB) during a locked or crossed market;
- (2) non-displayed orders priced to trade at the Midpoint Price;

¹⁸ See proposed Rule 11.132(e)(1).

¹⁹ See proposed Rule 11.132(e)(2).

²⁰ The term "NBO" shall mean the national best offer, and the term "NBB" shall mean the national best bid, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

followed by

- (3) Retail Liquidity Provider orders priced to trade at the Midpoint Price.

The following examples illustrate how IEX would handle orders under this proposed new rule:

Assume the following facts:

- (1) NBBO for security ABC is \$10.00 — \$10.10.²¹
- (2) User 1²² enters a Retail Liquidity Provider order to buy ABC at \$10.05 for 500 shares.
- (3) User 2 then enters an unpriced Discretionary Peg order to buy 500 shares of ABC.
- (4) User 3 then enters a Midpoint Peg order to buy 500 shares of ABC at \$10.04

Example 1: RMO 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

²¹ For purposes of these examples, assume it is not a period of quote instability as set forth in IEX Rule 11.190(g).

²² The term "User" shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130.

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 RMO.

Example 3: Assume the same facts as Example 1, except that User 3 enters a non-displayed 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)(viii)) and then against User 2 for the remaining 500 shares, completing the Retail order's 800 share quantity. User 1's buy order is not executed because it is ranked behind Users 2 and 3.

Implementation

The Exchange proposes that all securities traded on the Exchange would be eligible for inclusion in the Retail Program. Assuming that the Commission approves this proposed rule change, the Exchange will implement the proposed rule change within 90 days of approval and provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

Comparison to Existing Retail Programs

As described above, the proposed Retail Program is a simple approach designed to provide retail investors with the opportunity for meaningful price improvement (by executing at the Midpoint Price), by attracting counterparty liquidity to the Exchange from Members and their clients seeking to interact with retail liquidity.

IEX understands that many professional market participants, such as market makers, view interacting with orders of retail investors as more desirable than interacting

with orders of other professional market participants. For example, as the Commission staff noted in a 2016 memorandum to the Equity Market Structure Advisory Committee (“EMSAC Memorandum”), “[m]arket makers are interested in retail customer order flow because retail investors are, on balance, less informed than other traders about short-term price movements...[and t]rading against retail customer order flow enables market makers to avoid adverse selection by informed professional traders and to more reliably profit from market-making activity.” The EMSAC Memorandum also described that “[a]fter market makers internalize the relatively uninformed retail customer order flow, the informed order flow that remains is left for the exchanges to absorb...[and that t]ypically, dealers that pay to receive retail customer order flow will guarantee executions of that order flow with some amount of average price improvement over the national best bid or offer (“NBBO”) and with a separate payment to retail brokers for directing customer orders to them.”²³

Consistent with the EMSAC Memorandum’s conclusions, and based on informal discussions with market participants and the knowledge and experience of its staff, IEX believes that market makers and other sophisticated market participants generally value interacting with retail orders because they are smaller and not likely to be part of a larger parent order that can move a stock price, causing a loss to the market maker. For example, a retail order to buy 200 shares is probably just an order for 200 shares. In contrast, a 200-share buy order from a more sophisticated institutional market participant may be part of a 100,000-share parent order. If the market maker sells to the 200-share

²³ See January 26, 2016 Memorandum entitled “Certain Issues Affecting Customers in the Current Equity Market Structure” from the staff of the Commission’s Division of Trading and Markets, available at <https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-emsac-012616.pdf>.

child order, execution of the balance of the parent order may move the market up above the price at which the market maker sold.

The proposed rule change leverages IEX's existing market structure to provide enhanced price improvement opportunities for retail customers by incentivizing Members and their clients to provide liquidity to the orders of retail investors. The IEX Retail Program is similar to NYSE Rule 107C, governing NYSE's Retail Liquidity Program ("NYSE RLP") which was recently approved on a permanent basis by the Commission.²⁴ The proposed rule change is similar to the NYSE RLP with a few key distinctions, as described below. The proposed Retail Program is also similar to the Commission-approved retail pilot programs of NYSE Arca,²⁵ Cboe BYX²⁶ and Nasdaq BX²⁷ ("Current Retail Pilot Programs"), also with several differences as highlighted below.

- **More price improvement for retail investors.** The proposed rule change would provide more price improvement for retail customers than the NYSE RLP, because a Retail order on IEX could only execute at the Midpoint Price, as opposed to the minimum \$.001 price improvement that the NYSE RLP can provide.²⁸ IEX believes that its approach is preferable because executed Retail

²⁴ See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR-NYSE-2018-28) (approving NYSE RLP on a permanent basis). See also SR-NYSE-2019-26, Securities Exchange Act Release No. 85930 (May 23, 2019) adopting substantially similar rules for securities traded on the NYSE Pillar Platform on an immediately effective basis.

²⁵ See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) (approving NYSE Arca retail pilot program).

²⁶ See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019) (approving Cboe BYX retail pilot program).

²⁷ See Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR-BX-2014-048) (approving NASDAQ BX retail pilot program).

²⁸ The Exchange is not seeking an exemption under Rule 612 of Regulation NMS with respect to the "Sub-Penny Rule" because it will not accept or rank orders priced greater than \$1.00 per share in an increment smaller than \$0.01.

orders in stocks priced equal to or greater than \$1.00 will receive a minimum of \$0.005 in price improvement (half of the smallest bid/ask spread) compared to lesser amounts in the NYSE RLP²⁹ and the amount of price improvement is transparent by rule, rather than being dependent on the pricing of the contra-side non-displayed order. IEX's proposed Retail Program would also provide greater price improvement than the Current Retail Pilot Programs because those three retail pilot programs also allow for execution at sub-penny prices, as opposed to the IEX proposal which would only allow for execution at the Midpoint Price.

- **RLP orders available to all Members.** Unlike the NYSE RLP, IEX's Retail Program will not limit or discriminate among its Members and their clients, and will allow all Members and their clients to submit RLP orders that seek to interact and provide price improvement to incoming Retail orders. Because the order type is designed to create as much new price improvement opportunity for retail investors as possible, IEX does not believe that there is any reason to limit usage to a privileged group of Members. This aspect of the IEX Retail Program is similar to the Current Retail Pilot Programs, which also do not limit which Members can submit specialized retail liquidity providing orders that only interact with retail orders.
- **No dissemination of data identifying Retail orders on proprietary data feeds.** IEX would not disseminate when an RLP order is on the order book on any proprietary data feeds, as opposed to the NYSE RLP and the Current Retail Pilot

²⁹ See supra note 24, at 5759 ("Table 1"), which reflects average price improvement of \$0.0014 - \$0.0019 during the period January 2016 – December 2017. The NYSE RLP is limited to securities priced equal to or greater than \$1.00.

Programs, each of which disseminates retail liquidity providing orders on its proprietary data feeds. IEX believes that such dissemination could create unnecessary complexity, as well as a skewed and unduly limited view of the liquidity available to trade with Retail orders. RLP orders on IEX will simply be more dark liquidity priced to execute at the Midpoint Price. As described above, Retail orders will be able to execute against any order priced to execute at the Midpoint Price and RLP orders are just additive. Even in the absence of resting RLP orders, a Retail order could execute against existing order types. Thus, there will be no impact on consolidated or proprietary market data feeds, no flickering disseminations, and no inadvertent incentive to only route Retail orders to IEX when the presence of RLP order interest is being disseminated.

- **Uniform execution priority.** Retail orders on IEX would execute against available contra-side interest in a uniform manner, with RLP orders having lower priority than other liquidity providing orders priced to trade at the Midpoint Price. In contrast, the NYSE RLP and Current Retail Pilot Programs enable retail liquidity providing orders to gain higher priority than other liquidity providing orders by virtue of the ability to provide subpenny pricing, which results in immaterial price improvement. IEX believes that its approach is superior because it would provide for meaningful price improvement without complicating the market with orders priced and ranked based on immaterial, nonstandard subpenny increments. IEX also believes that it is appropriate for RLP orders to have lower priority than other orders priced to trade at the Midpoint Price because RLP orders are only available to Retail orders.

- **No exception relief needed for tick size trading increments.** The IEX Retail Program will operate in accordance with existing tick size trading increments. IEX is not requesting any exemptive relief in order to enable ranking and/or pricing orders in otherwise impermissible increments. As described above, this approach avoids enabling immaterial price improvement, as well as the concomitant complexity that such an approach can lead to.
- **No impact on order book priority.** IEX's approach will also not impact order book priority, as is the case with the proposal by Cboe EDGX Exchange, Inc to introduce retail order priority.³⁰

The Exchange believes that the above distinctions between its proposed rule change and the NYSE RLP and Current Retail Pilot Programs reflect a simple approach designed to provide better execution quality to retail investors, at a lower cost.

Modification to Rule 11.340

Finally, the Exchange proposes to delete Rule 11.340(d)(4), which currently states in relevant part that the Exchange does not operate a retail liquidity program. If the Commission approves the proposed Retail program, the text in Rule 11.340(d)(4) would no longer be accurate, and should therefore be deleted.

2. Statutory Basis

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

³⁰ See Securities Exchange Act Release No. 85482 (April 2, 2019), 84 FR 13729 (April 5, 2019) (SR-CboeEDGX-2019-012) (proposing rule change to give order book priority for equity orders submitted on behalf of retail investors).

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

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 these principles because it is designed to increase competition among execution venues and offer the potential for meaningful price improvement to orders of retail investors, including through incentivizing market participants to provide additional liquidity to execute against the orders of retail investors.

As discussed in the Purpose section, IEX's proposed Retail Program is a simple, transparent approach designed to provide opportunities for meaningful price improvement for Retail orders by incentivizing additional non-displayed resting interest priced to trade at the Midpoint Price.

Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. And IEX understands that broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Retail Program would differentiate among its Members, the Exchange believes that such differentiation is not unfairly discriminatory but rather is designed to promote a competitive process for retail executions while providing retail investors with the potential to receive meaningful price improvement. There is ample precedent for

differentiation of retail order flow in the existing approved programs of other national securities exchanges.³³ As the Commission has recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.³⁴

The Commission consistently highlights the need to ensure that the U.S. capital markets are structured with the interests of retail investors in mind, and recently highlighted its focus on the “long-term interest of Main Street Investors” as its number one strategic goal for fiscal years 2018 to 2022. The Exchange believes its Retail Program would serve the retail investing public by providing them with the opportunity for meaningful price improvement on eligible trades.

The Exchange notes that several other national securities exchanges, including NYSE as described herein, have for several years operated retail liquidity programs that include market segmentation whereby retail orders receive execution priority in specified circumstances.³⁵ A NYSE rule filing to make its retail liquidity pilot program permanent was recently approved by the Commission notwithstanding market segmentation. IEX understands that these programs were designed to promote competition for retail order flow among execution venues, most of which continues to be executed in the OTC markets rather than on exchanges.³⁶ Similarly, IEX’s Retail Program is designed to provide an additional competitive alternative for retail orders. IEX believes that it is

³³ See supra notes 24, 25, 26, and 27.

³⁴ See supra note 24 at 40679.

³⁵ See NYSE Rule 107C, NYSE Arca Equities Rule 7.44, Cboe Rule 11.24, and NASDAQ BX Rule 4780.

³⁶ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, 40679 (July 10, 2012) (SR–NYSE–2011–55) (order approving NYSE RLP pilot program)

appropriate to provide incentives to bring more retail order flow to a public exchange. As described in the Purpose section, these incentives include the opportunity for retail orders to receive meaningful price improvement, while also providing all Members with the opportunity to execute against such orders.

IEX believes that the proposed distinctions between its Retail Program and the NYSE RLP, as well as similar Current Retail Pilot Programs, will enhance competition among exchange venues. IEX further believes that this structure is designed to foster competition among exchanges and OTC markets, as well as to protect investors and the public interest, and is therefore consistent with the Act. IEX also believes that the segmentation in its Retail Program, as proposed, is less significant than in the NYSE RLP and the Current Retail Pilot Programs for two reasons. First, non-RLP orders priced to execute at the Midpoint Price have higher priority than RLP order. And second, any Member, or clients thereof, can enter an RLP order. This structure is designed to facilitate a broader interaction between Retail orders and those of all IEX market participants, rather than a more constrained approach whereby retail orders interact primarily with a segmented pool of liquidity providing orders of privileged members.

IEX believes that its proposed eligibility criteria for submission of a Retail order are consistent with the Act in that they are designed to provide reasonable assurance that such orders are on behalf of actual retail investors, as opposed to professional market participants. In this regard, IEX notes that the definition of a Retail order clearly specifies that it must reflect the trading interest of a natural person (including orders placed on behalf of accounts held in a corporate legal form such as Individual Retirement Accounts, so long as the order is submitted by an individual) without algorithmic or

computerized methodology changes to the order (except to change a market order to a marketable limit order). Further, as proposed, a Retail order can only be submitted by a Member that has been approved by IEX as an RMO, based upon appropriate criteria that provide reasonable assurances to IEX that the RMO will only identify orders as Retail orders in conformance with applicable IEX rules, as proposed. The proposed criteria and approval process are substantially similar to the definition of Retail Order in NYSE Rule 107C(a)(3) as well as comparable provisions of the rules of Current Retail Pilot Programs. The definition also includes additional clarifying text to explicitly include orders placed on behalf of accounts held in a corporate legal form such as Individual Retirement Accounts so long as the order is submitted by an individual, which is based on the definition of “Designated Retail Order” in the Nasdaq Stock Market (“Nasdaq”) pricing schedule.³⁷ Thus, IEX does not believe that its proposed criteria and approval process for submission of Retail orders raises any new or novel issues not already considered by the Commission.

IEX also believes that the proposed RMO approval, disapproval, and disqualification rules are consistent with the Act in that they provide a fair process for determining whether a Member qualifies as an RMO, as well as for appeals of denials thereof. These processes are also substantially similar to comparable provisions in NYSE Rule 107C(b) and the rules of Current Retail Pilot Programs.

The Exchange further believes that it is consistent with the Act to structure its proposed Retail Program such that 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

³⁷ See Equity 7, Section 118.

the Midpoint Price. As described above, the Exchange has structured its proposed Retail Program to provide that Retail orders will trade at the Midpoint Price, so that such orders receive meaningful price improvement. Further, and as discussed in the Purpose section, only permitting Retail orders to be executed at the Midpoint Price is designed to be a simple approach that does not introduce unnecessary complexity to the order entry and execution process on IEX. All orders, including Retail orders, will continue to be priced and ranked in standard increments and pursuant to existing priority.

The Exchange believes that introducing a program that provides and encourages additional liquidity and price improvement to Retail orders is appropriate because retail investors are typically less sophisticated than professional market participants and therefore would not have the type of technology to enable them to compete with such market participants. Therefore, the Exchange believes that it is consistent with the public interest and the protection of investors to provide retail investors with these enhanced opportunities.

In addition, the Exchange believes that providing for execution of Retail orders only at the Midpoint Price is also designed to facilitate Members' compliance with their best execution obligations when acting as agent on behalf of a Retail order.³⁸ Specifically, as noted in FINRA Regulatory Notice 15-46 (Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets), when conducting its review of execution quality in any security, a firm should consider, among other things, whether it could obtain mid-point price improvement on one venue versus less price improvement

³⁸ All IEX Members that handle customer orders as agent are required to be FINRA members, and therefore are subject to FINRA guidance. See 17 CFR 240.15b9-1(a).

on another venue.³⁹

The Exchange also believes that specifying that a Retail order must be Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK is designed to maximize the opportunity for such orders to be executed on IEX and receive such price improvement against resting interest on IEX priced to trade at the Midpoint Price. Thus, IEX believes that this approach is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and further the investor protection and public interest objectives of Section 6(b) of the Act, by establishing a structure that is designed to facilitate the provision of meaningful price improvement for orders of retail investors.

The Exchange believes that its priority and order execution approach for the Retail Program is consistent with the Act. As discussed in the Purpose section, the Exchange understands that a large majority of orders from retail investors are executed in the OTC market, and exchange retail programs have not attracted a significant volume.⁴⁰ While there are likely a variety of reasons for this, the IEX Retail Program is designed to provide meaningful incentives for Members to send orders of retail investors to IEX as well as for market participants to provide liquidity to Retail orders. Currently, retail orders are routed across different wholesalers and dark pools. The Exchange believes that creating an exchange retail program specifically designed to provide midpoint executions for retail investors will help grow that overall opportunity for exchange price improvement and introduce additional, healthy competition to the benefit of the retail

³⁹ See FINRA Regulatory Notice 15-46, endnote 25 available at: https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

⁴⁰ See supra note 24, at 5762 (“Although the Program provides the opportunity to achieve significant price improvement, the Program has not generated significant activity.... The Program’s share of NYSE volume during [in 2016-17] was below 0.4%”).

investor.

As discussed in detail above, the Exchange believes that the opportunity to obtain meaningful price improvement for Retail orders should operate as a powerful incentive for Members to send retail orders to IEX. Based on publicly available information, IEX notes that other exchange retail programs provide less price improvement overall,⁴¹ and believes that OTC retail programs guarantee to execute retail orders at prices better than the NBBO but not necessarily at the midpoint of the NBBO.⁴² While IEX typically has a deep pool of non-displayed liquidity priced to execute at the Midpoint Price, a key aspect of IEX's Retail Program is to further incentivize Members and their clients to enter additional non-displayed interest, including interest that will only trade with Retail orders. As discussed in the Purpose section, IEX believes that many professional market participants view interacting with orders of retail investors as desirable. Further, IEX understands that some market participants may be hesitant to enter resting interest to trade in public markets because of the risk of being subjected to latency arbitrage by more sophisticated market participants leveraging fast proprietary market data feeds and connectivity along with predictive strategies to chase short-term price momentum and successfully target resting orders at unstable prices. IEX also believes that retail investors are unlikely to have such technological advantages and as a result, certain market participants, including buy-side and other fundamental investors, may be more willing to enter resting interest to trade on a public exchange, and to allow that interest to rest for a longer period of time, if they were assured that their orders would not be subject to latency arbitrage by more sophisticated market participants. As the stock and

⁴¹ See e.g., supra note 29.

⁴² See supra note 23.

exchange trading product values fluctuate throughout the day, professional market participants will be able to utilize the RLP order type to provide liquidity to Retail orders at times when they might otherwise be unwilling to do so because of the differences between Retail and non-Retail orders described above. These market participants would have the additional flexibility to submit both RLP and non-RLP mid-point orders, and switch between them based on intraday values, resulting in enhanced mid-point liquidity throughout the trading day.

Thus, IEX believes that by providing an order type that only executes against retail orders, other market participants may be incentivized to enter additional resting interest on IEX. Accordingly, the Exchange further believes that it is consistent with the Act for RLP orders to only execute against Retail orders so as to incentivize the entry of RLP orders and thereby provide meaningful price improvement to Retail orders. In addition, to the extent that the RLP order structure is successful in incentivizing the entry of resting interest by buy-side and other fundamental investors, it would reduce unnecessary intermediation of Retail orders, which is consistent with the purposes of Section 6(b)(5) of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system as well as with Section 11A of the Act in that it is designed to provide enhanced opportunities for investor orders to be executed without the participation of a dealer, as described above.⁴³

At the same time, the Exchange believes that, given the benefit of trading only with Retail orders, it is consistent with the Act for RLP orders to have lower execution priority than other orders priced to trade at the Midpoint Price. IEX believes that a

⁴³ 15 U.S.C. 78k-1(a)(1)(c)(v).

healthy market includes interaction between a diverse array of market participants and is not seeking to establish a segmented pool within the Exchange. Accordingly, IEX believes that providing other orders priced to trade at the Midpoint Price with higher priority is an appropriate balancing of these competing considerations.

Finally, the Exchange believes that the deletion of Rule 11.340(d) pertaining to the expired Tick Size Pilot Plan,⁴⁴ which currently states in relevant part that the Exchange does not operate a retail liquidity program is consistent with the Act because, if the Commission approves the proposed rule change, the provision will be inaccurate. Notwithstanding that the Tick Size Pilot expired at the close of trading on September 28, 2018, continued inclusion of this provision could engender confusion on the part of Members and other market participants as to IEX's Retail Program. Consequently, the Exchange believes that it is consistent with the Act to delete the provision to ensure accuracy and consistency in IEX's rules.

In sum, the Exchange submits that its proposed Retail Program is a simple approach designed to provide an opportunity for retail customers' orders to receive meaningful price improvement in a manner consistent with the approved retail programs of other exchanges, but without certain complexities that IEX believes are unnecessary for its program. Thus, IEX believes that the proposed Retail Program is consistent with the Act in that it is designed 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. Further, IEX does not believe that the proposal raises any new or novel issues not already considered by the Commission.

⁴⁴ See IEX Trading Alert #2018-035 (Tick Size Pilot Program Expiration), available at <https://iextrading.com/alerts/#/35>.

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, IEX believes that introducing a Retail Program would continue to enhance competition and execution quality for retail order flow among execution venues and contribute to the public price discovery process.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

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 orders submitted by some Members will be treated differently, as described in the Purpose section, 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 enter an RLP order.

Finally, the Exchange does not believe that deleting Rule 11.340(d), pertaining to the expired Tick Size Pilot Plan, will impose any burden on competition since it is merely designed to remove a conflicting rule provision.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-IEX-2019-05 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2019-05. 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 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. 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-2019-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

⁴⁵ 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

Rule 11.190. Orders and Modifiers

(a) No Change.

(b) (1)-(13) No Change.

(14) Retail Liquidity Provider Order. A Discretionary Peg order that is only eligible to execute against Retail orders through the execution process described in Rule 11.232(e).

(15) Retail Order. An order submitted by a Retail Member Organization (as defined in Rule 11.232) and designated with a “Retail order” modifier. A Retail order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. A Retail order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. An order from a natural person can include orders submitted on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual.

(c)–(h) No Changes.

Rule 11.232. Retail Price Improvement Program

(a) Definitions.

(1) Retail Member Organization. A “Retail Member Organization” is an IEX Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail orders.

(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.

(3) “Retail Liquidity Provider order” has the meaning specified in IEX Rule 11.190(b)(14).

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of this Rule, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.

(2) To become a Retail Member Organization, a Member must submit:

(A) An application form;

(B) Supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member’s retail order flow, and any other documentation and information requested by the Exchange to confirm that the RMO applicant’s order flow would meet the requirements of the

Retail order definition; and

(C) An attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail orders will qualify as such under IEX Rule 11.232(a)(2).

(3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing.

(4) A disapproved applicant may:

(A) Request an appeal of such disapproval by the Exchange as provided in paragraph

(d) below; and/or

(B) Reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail orders if all requirements of a Retail order as specified in IEX Rule 11.190(b)(15) are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail order to assure that entry as a Retail order is in compliance with the requirements of IEX Rule 11.190(b)(15), and (ii) monitor whether orders entered as Retail orders meet the applicable requirements. If a Retail Member Organization does not itself conduct a retail business but routes Retail orders on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail orders meet the definition of a Retail order. The Retail Member Organization must: (i)

obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail orders that entry of such orders as Retail orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail order flow routed on behalf of such other broker-dealers meets the applicable requirements.

(c) Failure of Retail Member Organization to Abide by Retail Order Requirements.

(1) If a Retail Member Organization designates orders submitted to the Exchange as Retail orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify a Member from its status as a Retail Member Organization.

(2) Disqualification Determinations. The Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member

(3) Appeal and/or Reapplication for Retail Member Organization Status. A Retail Member Organization that is disqualified under this paragraph (c) may: (A) appeal such disqualification as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the date of the disqualification notice from the Exchange.

(d) Appeal of Disapproval or Disqualification.

(1) If a Member disputes the Exchange's decision to disapprove it under paragraph (b) above or disqualify it under paragraph (c) above, the Member ("Appellant") may request, within five business days after notice of the decision is issued by the Exchange,

that the Retail Member Organization Panel (“RMO Panel”) review the decision to determine if it was correct.

(2) The RMO Panel shall consist of the Exchange’s Chief Regulatory Officer (“CRO”), or a designee of the CRO, and two officers of the Exchange designated by the Exchange’s Chief Operating Officer (“COO”).

(3) The RMO Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(4) The RMO Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RMO Panel shall constitute final action by the Exchange.

(e) Priority and Order Execution.

(1) Retail Liquidity Provider orders in the same security shall be ranked and allocated according to price then time of entry into the System.

(2) Retail orders shall seek to execute upon entry into the System at 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) nondisplayed orders priced to trade at the Midpoint Price;

(iii) 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)(viii)) 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.

Rule 11.340. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot

(a)-(c) No Change.

(d) (1)-(3) No Change.

(4) [The Exchange does not operate a retail liquidity program. In the event that IEX receives an order from a Member that is identified as a Retail Investor Order or a retail liquidity providing order, IEX will accept such order if it is in a permissible increment, but will disregard identification as a Retail Investor Order or a retail liquidity providing order.

(5)] For Pilot Securities in Test Group Three:
