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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 16

Amendment No. (req. for Amendments *)

Filing by Investors' Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposed Rule Change to Modify the Definition of a Retail Order.

Contact Information

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

First Name * Nathaniel Last Name * Kolodny

Title * Lead Regulation Counsel

E-mail * nathaniel.kolodny@iextrading.com

Telephone * (646) 343-2034 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Investors' Exchange LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 11/12/2021

(Title *)

By Nathaniel Kolodny

Lead Regulation Counsel

(Name *)

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

Nathaniel
Kolodny

Digitally signed by Nathaniel
Kolodny
Date: 2021.11.12 17:28:28
-05'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change 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 Advanced Notice by Clearing Agencies *

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

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

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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),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 modify the definition of a Retail order set forth in IEX Rule 11.190(b)(15) to encourage the submission of more Retail orders. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act³ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁴

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

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
917-509-9001

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

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

a. Purpose

The Exchange proposes to modify the definition of a Retail order⁵ set forth in IEX Rule 11.190(b)(15) for the benefit of retail investors. Specifically, IEX is proposing to revert a recent change to IEX Rule 11.190(b)(15), so that Retail orders can once again be submitted on behalf of all retail customers without the requirements that the retail customer submits no more than 390 orders per day on average (the "390-order threshold"). The Exchange proposes to make this change to offer the benefits of IEX's Retail Price Improvement Program ("Retail Program") to as many retail investors as possible.

Background

In 2019 the Commission approved the Retail Program⁶, which is designed to provide retail investors with meaningful price improvement opportunities through trading at the Midpoint Price⁷ or better.⁸ The Exchange launched the Retail Program on October

⁵ See IEX Rule 11.190(b)(15).

⁶ See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (SEC order approving IEX's Retail Program).

⁷ The term "Midpoint Price" means the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" means 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).

⁸ On March 1, 2021, IEX filed an immediately effective rule change proposal to provide that, in

1, 2019.⁹

Under IEX's Retail Program, Members¹⁰ that qualify as Retail Member Organizations ("RMOs")¹¹ are eligible to submit Retail orders¹² to the Exchange. Any Member is able to provide price improvement to Retail orders through orders priced to execute at the Midpoint Price or better, including Retail Liquidity Provider ("RLP") orders¹³ that are only eligible to execute against a Retail order at the Midpoint Price and execute in price-time priority with other orders resting on the Order Book priced to trade at the Midpoint Price.

On July 13, 2021, the Commission approved an IEX rule change proposal that revised its Retail Program (the "Retail Program Update Filing").¹⁴ The Retail Program Update Filing was designed to further support and enhance the ability of non-professional

addition to executing at the Midpoint Price, a Retail order can execute against a displayed unprotected odd lot order that is resting on the Order Book at a price more aggressive than the Midpoint Price (*i.e.*, above the Midpoint Price in the case of an odd lot buy order and below the Midpoint Price in the case of an odd lot sell order). Executing against such an odd lot order thus provides more price improvement to the Retail order than executing at the Midpoint Price. See Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR-IEX-2021-03).

⁹ See Trading Alert #2019-026, available at <https://iextrading.com/alerts/#/82>.

¹⁰ See IEX Rule 1.160(s).

¹¹ See IEX Rule 11.232(a)(1).

¹² A Retail order is currently defined as an order submitted by an RMO 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, and 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 (a "retail customer"). An order from a retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form 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. A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). See IEX Rule 11.190(b)(15).

¹³ See IEX Rule 11.190(b)(14).

¹⁴ See Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (approving SR-IEX-2021-06).

retail investors to obtain meaningful price improvement by incentivizing market participants to compete to provide such price improvement.¹⁵ Specifically, the Retail Program Update Filing contained the following four enhancements to the Retail Program: (i) revised the definition of Retail order in IEX Rule 11.190(b)(15) to apply only to the trading interest of a natural person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s); (ii) modified RLP orders from Discretionary Peg¹⁶ to midpoint peg¹⁷ orders; (iii) modified RLP order priority so that they execute in time priority with other orders priced to trade at the Midpoint Price; and (iv) introduced a “Retail Liquidity Identifier” that is disseminated through the Exchange’s proprietary market data feeds and the appropriate securities information processor when RLP order interest aggregated to form at least one round lot for a particular security is available in the System¹⁸, provided that the RLP order interest is resting at the Midpoint Price and is priced at least \$0.001 better than the NBB¹⁹ or NBO.²⁰

IEX implemented the Retail Program Update Filing on October 13, 2021.²¹ Subsequently, and notwithstanding prior informal feedback from Members and market participants, IEX became aware that several existing and potential RMOs have not implemented a counting methodology to determine the number of equities orders submitted by each of their retail customers, as well as by the customers of broker-dealers

¹⁵ See *supra* note 14.

¹⁶ See IEX Rule 11.190(b)(10).

¹⁷ See IEX Rule 11.190(b)(9).

¹⁸ See IEX Rule 1.160(m).

¹⁹ See IEX Rule 1.160(u).

²⁰ See IEX Rule 1.160(u).

²¹ See Trading Alert # 2021-036, available at <https://iextrading.com/alerts/#/169>.

that route Retail orders through the RMO. As a result, such RMOs cannot submit Retail orders to IEX because they are unable to reasonably assure that such orders would be in compliance with the recent changes to IEX Rule 11.190(b)(15) which specifies that Retail orders may only be submitted on behalf of a natural person who submits no more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). Thus, while the 390-order threshold was intended to limit the use of Retail orders to retail investors who do not appear to be engaged in trading activity akin to that of a professional, it has had the unintended consequence of limiting the number of actual retail customers who are able to obtain the beneficial execution opportunities offered by the Exchange's Retail Program. As discussed more fully below, no other equities exchanges restrict retail orders in the same manner as IEX, and IEX believes that this factor may impact the willingness of Members representing retail orders to devote technology resources to implementing a counting methodology.

Accordingly, IEX proposes to revert the recent changes to the definition of a Retail order that limits Retail orders to customers who place no more than 390 equity orders per day on average during a calendar month for their own beneficial account(s). Thus, IEX proposes to delete the last sentence in IEX Rule 11.190(b)(15) which imposes the 390-order threshold, as well as Supplementary Materials .01 and .02 appended thereto that specify how RMOs should count orders for purposes of determining if a retail customer has placed no more than 390 orders per day and establish new compliance requirements for the RMOs with respect to the 390-order threshold.

IEX notes that no other exchange with a retail price improvement program restricts retail orders based upon the volume of trading of the retail customer, and that the

proposed changes to IEX Rule 11.190(b)(15) will make it substantially similar to those exchanges' definitions of a retail order.²² As noted in the Retail Program Update Filing, the 390-order threshold is also used by Cboe EDGX Exchange, Inc. ("EDGX") with respect to its equity market, but EDGX only uses the 390-order threshold to delineate retail priority orders that receive execution priority over most other orders resting on its order book.²³ EDGX continues to allow its RMOs to submit regular priority retail orders for retail customers without any assurance that the retail customer submits no more than 390 orders per day on average.²⁴

Furthermore, IEX notes that nothing in this proposed rule change will modify the pre-existing compliance obligations of RMOs to assure they are only submitting Retail orders on behalf of actual retail customers.²⁵ IEX believes these ongoing compliance obligations of RMOs will continue to assure that they only submit Retail orders to the Exchange that represent the trading interest of natural persons.

b. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5),²⁷ 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

²² See Cboe BYX Exchange, Inc. ("Cboe BYX") Rule 11.24(a)(2); Nasdaq BX, Inc. ("Nasdaq BX") Rule 4702(b)(6)(A); New York Stock Exchange LLC ("NYSE") Rule 7.44(a)(3); NYSE Arca, Inc. ("NYSE Arca") Rule 7.44-E(a)(3).

²³ See EDGX Rule 11.9 Interpretations and Policies .01 and .02. EDGX does not have a retail price improvement program, but does offer both retail orders and retail priority orders.

²⁴ See EDGX Rule 11.21(a)(2).

²⁵ See IEX Rule 11.232(b)(6).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

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.

The Commission has consistently emphasized that the U.S. capital markets should be structured with the interests of retail investors in mind²⁸ and the proposed change to the Retail Program is explicitly designed with that goal in mind. Specifically, reversing the recent change to the definition of Retail orders at IEX is designed to benefit retail investors by providing enhanced opportunities for as many retail investors as possible to obtain meaningful price improvement. IEX believes that encouraging the submission of more Retail orders to the Exchange should attract increased contra-side liquidity seeking to trade against and provide meaningful price improvement to such Retail orders.

Additionally, the Exchange believes that the proposed rule change is consistent with the protection of investors because, as described in the Purpose section, it will align its definition of Retail orders with that of all other exchanges that offer a retail price improvement program, thereby reducing potential confusion to market participants and increasing the ability of all market participants to participate in IEX's Retail Program as well as those of its competitors.

The Exchange also believes that the proposed rule change is consistent with the protection of investors because it is designed to increase competition among execution venues by enhancing IEX's Retail Program which offers the potential for meaningful price improvement to orders of retail investors, including through incentivizing market

²⁸ See 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.

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

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 the proposed enhancements to our Retail Program would continue to enhance competition and execution quality for retail customers.

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 RMOs will be treated differently than orders submitted by other Members, 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act²⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.³⁰ The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.³¹

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4³² because it is consistent with the protection of investors and the public interest in that it is designed to incentivize the entry of additional Retail orders on IEX by aligning the compliance requirements of its Retail Program with the compliance functions of RMOs that submit Retail orders to the Exchange, thereby enhancing price discovery for Retail orders and potentially increasing the overall liquidity profile on the Exchange to the benefit of all market participants.

IEX also does not believe that the proposed changes raise any new or novel issues that have not already been considered by the Commission because it is consistent with the

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4.

³¹ 17 CFR 240.19b-4(f)(6)(iii).

³² 17 CFR 240.19b-4(f)(6).

manner in which Retail orders were previously treated by IEX and are currently treated by other equities exchanges, as discussed in the Purpose section. Accordingly, the Exchange does not believe that the proposed approaches raise any new or novel issues not previously considered by the Commission, and has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act³³ and paragraph (f)(6) of Rule 19b-4 thereunder.³⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day operative delay so that a greater pool of retail investors can once again obtain the benefits of IEX's Retail Program, which were previously available. IEX believes that allowing RMOs to begin submitting a greater pool of Retail orders upon effectiveness of this rule change will benefit retail investors who may be able to obtain meaningful price improvement opportunities through IEX's Retail program.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4.

The proposed rule change is not based on the rules of any other exchange, but as discussed in the Purpose section, this proposal will align the definition of a Retail order in IEX Rule 11.190(b)(15) with the definitions in Cboe BYX Rule 11.24(a)(2), Nasdaq BX Rule 4702(b)(6)(A), NYSE Rule 7.44(a)(3), and NYSE Arca Rule 7.44-E(a)(3).

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-2021-16)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Definition of a Retail Order.

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 the Exchange is filing with the Commission a proposed rule change to modify the definition of a Retail order set forth in IEX Rule 11.190(b)(15) to encourage the submission of more Retail orders. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the Commission

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.

⁶ 15 U.S.C. 78s(b)(3)(A).

with the notice required by Rule 19b-4(f)(6) thereunder.⁷

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to modify the definition of a Retail order⁸ set forth in IEX Rule 11.190(b)(15) for the benefit of retail investors. Specifically, IEX is proposing to revert a recent change to IEX Rule 11.190(b)(15), so that Retail orders can once again be submitted on behalf of all retail customers without the requirements that the retail customer submits no more than 390 orders per day on average (the "390-order threshold"). The Exchange proposes to make this change to offer the benefits of IEX's Retail Price Improvement Program ("Retail Program") to as many retail investors as possible.

⁷ 17 CFR 240.19b-4.

⁸ See IEX Rule 11.190(b)(15).

Background

In 2019 the Commission approved the Retail Program⁹, which is designed to provide retail investors with meaningful price improvement opportunities through trading at the Midpoint Price¹⁰ or better.¹¹ The Exchange launched the Retail Program on October 1, 2019.¹²

Under IEX's Retail Program, Members¹³ that qualify as Retail Member Organizations ("RMOs")¹⁴ are eligible to submit Retail orders¹⁵ to the Exchange. Any Member is able to provide price improvement to Retail orders through orders priced to execute at the Midpoint Price or better, including Retail Liquidity Provider ("RLP")

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

¹⁰ The term "Midpoint Price" means the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" means 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).

¹¹ On March 1, 2021, IEX filed an immediately effective rule change proposal to provide that, in addition to executing at the Midpoint Price, a Retail order can execute against a displayed unprotected odd lot order that is resting on the Order Book at a price more aggressive than the Midpoint Price (*i.e.*, above the Midpoint Price in the case of an odd lot buy order and below the Midpoint Price in the case of an odd lot sell order). Executing against such an odd lot order thus provides more price improvement to the Retail order than executing at the Midpoint Price. See Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR-IEX-2021-03).

¹² See Trading Alert #2019-026, available at <https://iextrading.com/alerts/#/82>.

¹³ See IEX Rule 1.160(s).

¹⁴ See IEX Rule 11.232(a)(1).

¹⁵ A Retail order is currently defined as an order submitted by an RMO 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, and 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 (a "retail customer"). An order from a retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form 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. A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). See IEX Rule 11.190(b)(15).

orders¹⁶ that are only eligible to execute against a Retail order at the Midpoint Price and execute in price-time priority with other orders resting on the Order Book priced to trade at the Midpoint Price.

On July 13, 2021, the Commission approved an IEX rule change proposal that revised its Retail Program (the “Retail Program Update Filing”).¹⁷ The Retail Program Update Filing was designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement by incentivizing market participants to compete to provide such price improvement.¹⁸ Specifically, the Retail Program Update Filing contained the following four enhancements to the Retail Program: (i) revised the definition of Retail order in IEX Rule 11.190(b)(15) to apply only to the trading interest of a natural person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s); (ii) modified RLP orders from Discretionary Peg¹⁹ to midpoint peg²⁰ orders; (iii) modified RLP order priority so that they execute in time priority with other orders priced to trade at the Midpoint Price; and (iv) introduced a “Retail Liquidity Identifier” that is disseminated through the Exchange’s proprietary market data feeds and the appropriate securities information processor when RLP order interest aggregated to form at least one round lot for a particular security is available in the System²¹, provided that the RLP order interest is resting at the Midpoint Price and is priced at least \$0.001 better than the NBB²² or

¹⁶ See IEX Rule 11.190(b)(14).

¹⁷ See Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (approving SR-IEX-2021-06).

¹⁸ See *supra* note 17.

¹⁹ See IEX Rule 11.190(b)(10).

²⁰ See IEX Rule 11.190(b)(9).

²¹ See IEX Rule 1.160(nn).

²² See IEX Rule 1.160(u).

NBO.²³

IEX implemented the Retail Program Update Filing on October 13, 2021.²⁴ Subsequently, and notwithstanding prior informal feedback from Members and market participants, IEX became aware that several existing and potential RMOs have not implemented a counting methodology to determine the number of equities orders submitted by each of their retail customers, as well as by the customers of broker-dealers that route Retail orders through the RMO. As a result, such RMOs cannot submit Retail orders to IEX because they are unable to reasonably assure that such orders would be in compliance with the recent changes to IEX Rule 11.190(b)(15) which specifies that Retail orders may only be submitted on behalf of a natural person who submits no more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). Thus, while the 390-order threshold was intended to limit the use of Retail orders to retail investors who do not appear to be engaged in trading activity akin to that of a professional, it has had the unintended consequence of limiting the number of actual retail customers who are able to obtain the beneficial execution opportunities offered by the Exchange's Retail Program. As discussed more fully below, no other equities exchanges restrict retail orders in the same manner as IEX, and IEX believes that this factor may impact the willingness of Members representing retail orders to devote technology resources to implementing a counting methodology.

Accordingly, IEX proposes to revert the recent changes to the definition of a Retail order that limits Retail orders to customers who place no more than 390 equity orders per day on average during a calendar month for their own beneficial account(s).

²³ See IEX Rule 1.160(u).

²⁴ See Trading Alert # 2021-036, available at <https://iextrading.com/alerts/#/169>.

Thus, IEX proposes to delete the last sentence in IEX Rule 11.190(b)(15) which imposes the 390-order threshold, as well as Supplementary Materials .01 and .02 appended thereto that specify how RMOs should count orders for purposes of determining if a retail customer has placed no more than 390 orders per day and establish new compliance requirements for the RMOs with respect to the 390-order threshold.

IEX notes that no other exchange with a retail price improvement program restricts retail orders based upon the volume of trading of the retail customer, and that the proposed changes to IEX Rule 11.190(b)(15) will make it substantially similar to those exchanges' definitions of a retail order.²⁵ As noted in the Retail Program Update Filing, the 390-order threshold is also used by Cboe EDGX Exchange, Inc. ("EDGX") with respect to its equity market, but EDGX only uses the 390-order threshold to delineate retail priority orders that receive execution priority over most other orders resting on its order book.²⁶ EDGX continues to allow its RMOs to submit regular priority retail orders for retail customers without any assurance that the retail customer submits no more than 390 orders per day on average.²⁷

Furthermore, IEX notes that nothing in this proposed rule change will modify the pre-existing compliance obligations of RMOs to assure they are only submitting Retail orders on behalf of actual retail customers.²⁸ IEX believes these ongoing compliance obligations of RMOs will continue to assure that they only submit Retail orders to the Exchange that represent the trading interest of natural persons.

²⁵ See Cboe BYX Exchange, Inc. ("Cboe BYX") Rule 11.24(a)(2); Nasdaq BX, Inc. ("Nasdaq BX") Rule 4702(b)(6)(A); New York Stock Exchange LLC ("NYSE") Rule 7.44(a)(3); NYSE Arca, Inc. ("NYSE Arca") Rule 7.44-E(a)(3).

²⁶ See EDGX Rule 11.9 Interpretations and Policies .01 and .02. EDGX does not have a retail price improvement program, but does offer both retail orders and retail priority orders.

²⁷ See EDGX Rule 11.21(a)(2).

²⁸ See IEX Rule 11.232(b)(6).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Section 6(b)(5),³⁰ 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.

The Commission has consistently emphasized that the U.S. capital markets should be structured with the interests of retail investors in mind³¹ and the proposed change to the Retail Program is explicitly designed with that goal in mind. Specifically, reversing the recent change to the definition of Retail orders at IEX is designed to benefit retail investors by providing enhanced opportunities for as many retail investors as possible to obtain meaningful price improvement. IEX believes that encouraging the submission of more Retail orders to the Exchange should attract increased contra-side liquidity seeking to trade against and provide meaningful price improvement to such Retail orders.

Additionally, the Exchange believes that the proposed rule change is consistent with the protection of investors because, as described in the Purpose section, it will align its definition of Retail orders with that of all other exchanges that offer a retail price improvement program, thereby reducing potential confusion to market participants and increasing the ability of all market participants to participate in IEX's Retail Program as

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See 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.

well as those of its competitors.

The Exchange also believes that the proposed rule change is consistent with the protection of investors because it is designed to increase competition among execution venues by enhancing IEX's Retail Program which offers 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.

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 the proposed enhancements to our Retail Program would continue to enhance competition and execution quality for retail customers.

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 RMOs will be treated differently than orders submitted by other Members, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)³² of the Act and Rule 19b-4(f)(6)³³ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, so that a greater pool of retail investors can once again obtain the benefits of IEX's Retail Program, which were previously available. IEX believes that allowing RMOs to begin submitting a greater pool of Retail orders upon effectiveness of this rule change will benefit retail investors who may be able

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii).

to obtain meaningful price improvement opportunities through IEX's Retail program.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2021-16 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2021-16. This file number should be included in the subject line if email is used. To help the Commission process

³⁶ 15 U.S.C. 78s(b)(2)(B).

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-2021-16 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.³⁷

³⁷ 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)-(14) No Change.

(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 (a “retail customer”). An order from a retail customer 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.[A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s).

...Supplementary Material...

.01 Retail Orders. A “Retail order”, as defined in Rule 11.190(b)(15), may only be entered on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). For purposes of counting orders to determine whether the 390 equity order per day on average threshold has been reached:

(a) “Parent”/”Child” Orders. A “parent” order that is broken into multiple “child” orders by a broker or dealer, or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer, counts as one order even if the “child” orders are routed across multiple exchanges.

(b) Cancel/Replace. Any order that cancels and replaces an existing order counts as a separate order; except that an order that cancels and replaces any “child” order resulting from a “parent” order that is broken into multiple “child” orders, does not count as a new order.

.02 “Retail Member Organizations”, as defined in Rule 11.232(a)(1), that enter Retail orders must have reasonable policies and procedures in place to ensure that such orders are appropriately represented on the Exchange. Such policies and procedures should provide for a review of retail customers’ activity on at least a quarterly basis.

(a) Retail orders for any retail customer that had an average of more than 390 equity orders per day during any month of a calendar quarter are not eligible to be entered as Retail orders for the next calendar quarter. Retail Member Organizations must conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter.

(b) If during a quarter the Exchange identifies a retail customer for which orders are being represented as Retail orders but that has averaged more than 390 equity orders per day during a month, the Exchange will notify the Retail Member Organization, and the Retail Member Organization will be required to change the manner in which it is representing the retail customer’s orders within five business days.]

(16) No Changes.

(c)–(h) No Changes.
