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

File No. \* SR 2021 - \* 17

Amendment No. (req. for Amendments \*)

Filing by Investors' Exchange LLC

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

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

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| <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) |

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

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

Proposed Rule Change to Reintroduce a Market Maker Peg Order Type.

### 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 | 12/14/2021                    | (Title *)               |  |
| By   | Nathaniel Kolodny<br>(Name *) | Lead Regulation Counsel |  |

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: 2021.12.14 10:00:32 -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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market maker peg revival Ex 1 - SEC

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Investors Exchange LLC (“IEX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to reintroduce a new Market Maker Peg order type, designed to simplify market maker compliance with IEX Rule 11.151 (Market Maker Obligations), and make a conforming change regarding connectivity within the Exchange System.

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

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

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

comments on the proposed rule change are:

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

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

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

a. Purpose

IEX is filing this rule change proposal to reintroduce a Market Maker Peg order type. IEX previously had a Market Maker Peg order type<sup>3</sup>, which it retired in 2020<sup>4</sup> because at the time there were no Exchange-registered market makers.<sup>5</sup> As described below, IEX's proposed new order type is almost identical to its original, Commission-approved, market maker peg order type, with the exception that the new Market Maker Peg order will have tighter quoting spreads than are required by IEX Rule 11.151.

Background

IEX Rule 11.151 (Market Maker Obligations) requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid ("NBB") and National Best Offer ("NBO"),<sup>6</sup> as appropriate. In addition to the market maker quoting and pricing obligations set forth in the Exchange's rules, market makers must meet their obligations

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<sup>3</sup> See Securities Exchange Act Release No. 81482 (August 25, 2017), 82 FR 41452 (August 31, 2017) (SR-IEX-2017-22) (Approval Order).

<sup>4</sup> See Securities Exchange Act Release No. 89146 (June 24, 2020), 85 FR 39251 (June 24, 2020) (SR-IEX-2020-07).

<sup>5</sup> See generally IEX Rules 11.150 and 11.151.

<sup>6</sup> As defined by Regulation NMS Rule 600(b)(50). 17 CFR 242.600(50); see also IEX Rule 1.160(u).

under Rule 15c3-5 under the Act (the “Market Access Rule”)<sup>7</sup> and Regulation SHO.<sup>8</sup>

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as “all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.”<sup>9</sup>

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a “locate” for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.<sup>10</sup> While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,<sup>11</sup> the

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<sup>7</sup> 17 CFR 240.15c3-5.

<sup>8</sup> 17 CFR 242.200 through 204.

<sup>9</sup> See supra note 7.

<sup>10</sup> See supra note 8.

<sup>11</sup> See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO’s “locate” requirement for market makers engaged in bona fide market making that may need to facilitate customer orders in a fast-moving market without being subject to the possible delays associated with complying with such requirement. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO’s “locate” requirement). See also Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO’s “locate” requirement including without limitation whether the market maker incurs any economic or market

availability of those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg order.

#### Proposed Rule

The Exchange is proposing to reintroduce an optional Market Maker Peg order type, which will be identical to the previously approved order type, with the exception of the tighter quoting obligations discussed below. The Market Maker Peg order type is designed to simplify market maker compliance with the continuous quoting and pricing obligations in IEX Rule 11.151(a) in a manner consistent with compliance with the Market Access Rule and Regulation SHO. The Market Maker Peg order, as proposed, is not only almost identical to IEX's previously approved Market Maker Peg order type<sup>12</sup>, it is also substantially similar to equivalent order types offered by other market centers, including Cboe BZX Exchange, Inc. ("Cboe BZX"), Nasdaq Stock Market LLC ("Nasdaq"), and Cboe EDGX Exchange, Inc. ("Cboe EDGX").<sup>13</sup> Specifically, the Market Maker Peg order would be a one-sided limit order and, similar to other peg orders available to IEX Members<sup>14</sup>, priced in reference to or "pegged" to the NBB or NBO,<sup>15</sup> but is distinguishable in that like all other exchange market maker peg orders, it would

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risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.190(b)(17) for eligibility for the bona-fide market making exception to the "locate" requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer's close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

<sup>12</sup> See supra note 3.

<sup>13</sup> See e.g., Cboe BZX Rule 11.9(c)(15), Nasdaq Rule 4702(b)(7), and Cboe EDGX Rule 11.8(e).

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

<sup>15</sup> See IEX Rule 11.190(a)(3).

always be displayed. In addition, a new timestamp is created for the order each time that it is automatically adjusted in accordance with the proposed rule. And Market Maker Peg orders may only be entered by a registered market maker, as defined in IEX Rule 11.150.

The Exchange believes that this order-based approach would provide an effective compliance tool to facilitate market makers' compliance with IEX Rule 11.151(a), while also enabling compliance with the requirements of the Market Access Rule and Regulation SHO. Specifically, market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers using Market Maker Peg orders would be able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also facilitating compliance with their Exchange market making obligations. In this regard, the Market Maker Peg order does not ensure that the market maker is satisfying the requirements of the Market Access Rule, such as maintaining a system of risk management and supervisory controls reasonably designed to manage the risk of its market access business activity<sup>16</sup>, or of Regulation SHO, including the satisfaction of the locate requirements of Regulation SHO Rule 203(b)(1) or an exception thereto.<sup>17</sup> Market makers must continue to perform the necessary checks to comply with both the Market Access Rule and Regulation SHO, prior to entry of a Market Maker Peg order.

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<sup>16</sup> See *supra* note 7.

<sup>17</sup> 17 CFR 242.203(b)(1).

The Market Maker Peg order would be limited to registered market makers<sup>18</sup> and would have its price automatically set and adjusted by the System<sup>19</sup>, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quoting and pricing obligations.<sup>20</sup> Specifically, upon entry or at the beginning of the Regular Market Session, as applicable, the entered bid or offer is automatically priced by the System at the Market Maker Peg Designated Percentage away from the then current NBB or NBO, as applicable, or if there is no NBB or NBO, at the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. Proposed IEX Rule 11.190(b)(17)(A) defines the "Market Maker Peg Designated Percentage" as eight (8) percentage points for all securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Market Maker Peg Designated Percentage shall be twenty (20) percentage points. For example, if the NBB of a security is \$10 and the Market Maker Peg Designated Percentage for the security is 8%, the displayed price of a Market Marker Peg Order to buy would be \$9.20. Market makers may submit Market Maker Peg orders to the Exchange starting at the beginning of the Pre-Market Session, but the order will not be executable or automatically priced until the beginning of the Regular Market Session and will expire at the end of the Regular Market Session.

IEX also proposes to define, in proposed IEX Rule 11.190(b)(17)(2), a new term, "Market Maker Peg Defined Limit", as nine and one half (9.5) percentage points for all

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<sup>18</sup> See IEX Rule 11.150.

<sup>19</sup> See IEX Rule 1.160(nn).

<sup>20</sup> The Market Maker Peg order is one-sided, and thus a market maker seeking to use Market Maker Peg orders to comply with the Exchange's continuous two-sided quotation requirements would need to submit both a bid and an offer using the order type.



securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Market Maker Peg Defined Limit shall be twenty-one and one half (21.5) percentage points.

Upon reaching the Market Maker Peg Defined Limit, the price of a Market Maker Peg order bid or offer will be adjusted by the System to the Market Maker Peg Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, the order will, by default, be the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. In the foregoing example, if the Market Maker Peg Defined Limit is 9.5% and the NBB increased to \$10.17, such that the displayed price of the Market Maker Peg order would be more than 9.5% away, the order would be repriced to \$9.36, or 8% away from the NBB.

If a Market Maker Peg order bid or offer moves a specified number of percentage points away from the Market Maker Peg Designated Percentage towards the then current NBB or NBO, which number of percentage points will be determined and published in a circular distributed to Members from time to time, the price of such bid or offer will be adjusted by the System to the Market Maker Peg Designated Percentage away from the then current NBB or NBO, as applicable. If there is no NBB or NBO, as applicable, the order will be adjusted by the System to the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that pricing a Market Maker Peg order at the Market Maker Peg Designated Percentage away from the then current NBB and NBO, or, if no NBB or NBO, to the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single

plan processor, would result in the order exceeding its limit price, the order will be cancelled or rejected.

If, after entry, the Market Maker Peg order is priced based on the last reported sale from the single plan processor and such Market Maker Peg order is established as the NBB or NBO, the Market Maker Peg order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new NBB or NBO is established by a national securities exchange.

As noted above, this proposed reintroduction of the IEX Market Maker Peg order type is identical to the Market Maker Peg order type previously approved by the Commission, with the exception of the tighter quoting spreads that result from using the “Market Maker Peg Designated Percentage” and “Market Maker Peg Defined Limit” instead of the “Designated Percentage”<sup>21</sup> and “Defined Limit”<sup>22</sup> set forth in IEX’s Market Maker Obligations rule. Specifically, the Market Maker Obligations rule sets the Designated Percentage at 28% below/above the NBB/NBO, and 30% below/above the NBB/NBO at the market open and close for stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. And the Market Maker Obligations rule sets the Defined Limit for those same stocks to be 29.5% below/above the NBB/NBO, and 31.5% below/above the NBB/NBO at the market open and close. For stocks that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products; the Designated Percentage and Defined Limit would be the same as the Market Maker Peg Designated Percentage and Market

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<sup>21</sup> See IEX Rule 11.151(a)(6).

<sup>22</sup> See IEX Rule 11.151(a)(7).

Maker Peg Defined Limit, respectively. Thus, as proposed, market makers using the optional IEX Market Maker Peg order type will quote at narrower spreads than required by IEX Rule 11.151 for stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products.

IEX proposes to incorporate a tighter quoting structure for the Market Maker Peg order type in order to simplify technical complexities in the design of the order type associated with treating all stocks equally. Moreover, IEX believes that tighter displayed quoting spreads could help to increase access to displayed liquidity being posted by IEX market makers.

The Exchange notes that notwithstanding the availability of the proposed Market Maker Peg order functionality, a market maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of IEX Rule 11.151. Furthermore, a market maker would not be required to use the Market Maker Peg order type and can instead submit its own quotes to satisfy its quoting and pricing obligations for any securities for which it is a registered market maker<sup>23</sup>.

Market Maker Peg orders, like all incoming orders, will be subject to 350 microseconds of inbound latency<sup>24</sup> from the IEX point-of-presence (“POP”) before reaching the System.<sup>25</sup> Each time a Market Maker Peg order is automatically adjusted by the System in accordance with this proposed rule change (in response to a change in the NBB or NBO), the modified order instruction will be subject to 350 microseconds of latency between the Market Maker Peg order repricing logic (*i.e.*, the process by which

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<sup>23</sup> See IEX Rule 11.151(a)(1).

<sup>24</sup> See IEX Rule 11.510(b)(1).

<sup>25</sup> See IEX Rule 11.510(a).

the System determines that the price of the Market Maker Peg order should be adjusted) and the Order Book<sup>26</sup> (to be equivalent to the 350 microseconds of inbound latency for all incoming orders) and all outbound communications to the market maker related to the modified order instruction will be subject to 37 microseconds of latency between the Market Maker Peg order repricing logic and the POP (to be equivalent to the 37 microseconds of outbound latency that a market maker would have to wait for order entry confirmation), pursuant to IEX Rule 11.510(c)(1).<sup>27</sup> In addition, a new timestamp is created for the order each time that it is automatically adjusted by the System in accordance with the proposed rule. This approach is designed so that a market maker using a Market Maker Peg order to facilitate compliance with the Exchange's continuous quoting and pricing obligations is in the same position as a market maker updating its own quote, whose orders and order modification instructions would be subjected to a 350-microsecond inbound latency and 37-microsecond outbound latency.

The Exchange also proposes to make a conforming change to IEX Rule 11.510(c)(1) regarding connectivity, to provide that, pursuant to IEX Rule 11.190(b)(17), each time a Market Maker Peg order is automatically adjusted by the System, all inbound communications related to the modified order instruction will be subject to a 350-microsecond latency and all outbound communications related to the modified order instruction will be subject to a 37-microsecond latency between the Market Maker Peg order repricing logic and the Order Book.

The Exchange plans to implement the proposed changes in December 2021 or

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<sup>26</sup> See IEX Rule 1.160(p).

<sup>27</sup> See proposed edits to IEX Rule 11.510(c)(1).

January 2022, subject to the effectiveness of filing with the Commission. The Exchange will announce the implementation date of the proposed changes by Trader Alert at least 10 business days in advance of such implementation date and within 90 days of the effectiveness of this proposed rule change.

b. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>28</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>29</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. As noted above, the Exchange believes that the proposed rule is designed to simplify market maker compliance with the minimum continuous quoting and pricing obligations, as well as facilitate market maker compliance with the requirements of the Market Access Rule and Regulation SHO.

Specifically, the Exchange believes that simplifying compliance with this rule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it will provide a simplified means by which market makers may offer liquidity, using a tighter quoting spread than the market maker obligations require, even in circumstances where they are not willing to quote at the inside market. As a result, in circumstances where

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<sup>28</sup> 15 U.S.C. 78f.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

liquidity available at displayed prices closer to the inside than the price of a Market Maker Peg order is exhausted during an aggressive market-wide sweep, the Market Maker Peg order may nevertheless be available to support executions at prices that are at least within the applicable Market Maker Peg Designated Percentage or Market Maker Peg Defined Limit. Moreover, the methodology for repricing Market Maker Peg orders is consistent with the requirements of the Act because it is designed to ensure that the displayed price of the order is at least within the applicable Market Maker Peg Designated Percentage or Market Maker Peg Defined Limit, as applicable.

The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act<sup>30</sup> in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that offering the Market Maker Peg order to market makers exclusively is consistent with fair competition among brokers and dealers in that market makers have chosen to subject themselves to the obligations of IEX Rule 11.151, and the benefit conferred on such market participants by this order type is commensurate with such obligations. Furthermore, all Members are eligible to apply for registration as a market maker under Rule 11.150 on a fair and equal basis.

The Exchange also believes that it is fair and reasonable for all inbound communications related to the repricing of a Market Maker Peg order to be subject to 350 microseconds of latency and for all outbound communications related to the repricing of a Market Maker Peg order to be subject to 37 microseconds of latency, each between the Market Maker Peg repricing logic and the Order Book. As noted in the Purpose section,

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<sup>30</sup> 15 U.S.C. 78k-1.

this approach is designed so that a market maker using a Market Maker Peg order to facilitate compliance with the Exchange's continuous quoting and pricing obligations is in the same position as a market maker updating its own quote, whose order instructions would be subject to 350 microseconds of inbound latency and 37 microseconds of outbound latency. Similarly, price adjustments to Market Maker Peg orders will experience the same latency as other displayed limit orders entered on the Exchange.

Accordingly, the Exchange believes that it is consistent with the public interest and the protection of investors to reprice Market Maker Peg orders subject to a 350-microsecond latency for all inbound communications related to the modified order instruction and a 37-microsecond latency for all outbound communications related to the modified order instruction in the interest of ensuring that market makers using the Market Maker Peg order type will not have any unfair advantage over market makers that update their own quotes, as well as with other market participants using displayed orders.

Furthermore, the Exchange believes that it is consistent with the public interest and the protection of investors to apply a new timestamp to a Market Maker Peg order each time it is repriced so that a Market Maker Peg order does not achieve execution priority superior to a displayed order entered at that price earlier in time. Accordingly, market makers will not have any unfair advantage over a market maker updating its own quote, or other market participants using displayed orders on the Exchange.

Additionally, the Exchange believes that the proposed conforming rule change to IEX Rule 11.510(c)(1) is consistent with the protection of investors and the public interest in that it is designed to provide clarity to market participants regarding Market Maker Peg order repricing methodology.

Finally, IEX notes that the Commission previously approved an almost identical market maker peg order type.<sup>31</sup> As described in the Purpose section, the one difference between this proposed Market Maker Peg order type and IEX's previous market maker peg order type is that this order type will apply the same Market Maker Peg Designated Percentage and Market Maker Peg Defined Limit to all stocks, irrespective of if they are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products . IEX believes this modification is consistent with the protection of investors and helps perfect the mechanism of a free and open market because this proposal will result in Market Maker Peg orders resting on the Order Book quoting at the tighter limit that is only required for certain securities. IEX believes these tighter quote spreads would be of particular benefit to investors during times of high market volatility by making it more likely that a security will avoid so-called "stub quotes" that are so far away from the NBB or NBO that the quote is unlikely to be executed. Additionally, IEX notes that the proposed application of the tighter quote spreads to all Market Maker Peg orders will simplify the technical complexities in the design and functioning of the order type. Furthermore, IEX notes that the proposed Market Maker Peg order is an optional order type that may be used by any registered market maker to facilitate its compliance with their obligations but that market makers are free to manage their own quotes subject to the applicable quoting and pricing requirements of IEX Rule 11.151.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>31</sup> See supra note 3.



Specifically, the Exchange believes that the proposal will enhance the Exchange's competitiveness by providing market makers on IEX with a tool designed to facilitate quoting and offering liquidity even in circumstances where they are not willing to quote at the inside market. Based on informal discussion with market participants that serve as market makers on other trading centers, the Exchange believes that this functionality will be appealing to potential market makers, and therefore will make it more likely that market participants will choose to become registered market makers on the Exchange. This may, in turn, increase the extent of liquidity available on IEX and increase its ability to compete with other execution venues to attract orders that are seeking liquidity. The Exchange further notes that the Market Maker Peg order, as proposed, is substantially similar to equivalent order types offered by other market centers, including Cboe BZX, Nasdaq, and Cboe EDGX, and therefore will not impair market participants or other market centers from competing, but would in fact allow the Exchange to compete with existing functionality offered by competing market centers.<sup>32</sup> Moreover, there is no barrier to other exchanges adopting the same repricing functionality subject to the Commission rule filing process pursuant to Section 19(b) of the Act.

With regard to intra-market competition, the Exchange does not believe that the method of repricing Market Maker Peg orders will result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, as described in the Statutory Basis section, the proposed Market Maker Peg order type is an optional order type that would be available to IEX market makers that is designed so that market makers using Market Maker Peg orders will not be subject

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<sup>32</sup> See supra note 13.

to any competitive advantage compared to market makers updating their own quotes, or other market participants using displayed orders. Furthermore, as discussed in the Statutory Basis section, the Exchange believes that offering the Market Maker Peg order to market makers exclusively is consistent with fair competition among brokers and dealers in that market makers have chosen to subject themselves to the obligations of IEX Rule 11.151, and the benefit conferred on such market participants by this order type is commensurate with the obligations. Furthermore, all Members are eligible to apply for registration as a market maker under Rule 11.150 on a fair and equal basis.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>33</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>34</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (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

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<sup>33</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>34</sup> 17 CFR 240.19b-4.

brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>35</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>36</sup> because it is consistent with the protection of investors and the public interest in that it is designed to incentivize the entry of additional displayed orders on IEX by facilitating prospective new market makers' ability to fulfill their quoting obligations, thereby 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 almost identical to an IEX rule filing previously approved by the Commission, with the only change being the use of tighter quoting spreads for certain stocks, as discussed in the Purpose section.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>37</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>38</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. IEX believes that this proposed rule change is consistent with the protection of investors and the public interest because it is restoring an order type previously approved by the Commission (therefore raising no new

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<sup>35</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>38</sup> 17 CFR 240.19b-4.

or novel issues), with the only difference being that this Market Maker Peg order will apply the tighter market maker quoting spreads to all securities for which a market maker posts a Market Maker Peg order. Accordingly, the Exchange respectfully requests that the Commission waive the 30-day operative delay so that IEX market makers can immediately use the Market Maker Peg order type to help satisfy their quoting obligations. IEX believes that allowing market makers to begin using the Market Maker Peg order type immediately upon effectiveness of this rule change will potentially increase the displayed liquidity on IEX's Order Book to the benefit all investors, which will serve the public interest.

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

The proposed rule is based on the retired (but previously Commission-approved) IEX Rule 11.190(b)(13),<sup>39</sup> with the only change being the introduction of a single Market Maker Peg Designated Percentage and Defined Limit for all Market Maker Peg orders.

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.

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<sup>39</sup> See supra notes 3 and 4.

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-2021-17)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reintroduce a Market Maker Peg Order Type.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on (date), the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Pursuant to the provisions of Section 19(b)(1) under the Act,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> the Exchange is filing with the Commission a proposed rule change to reintroduce a new Market Maker Peg order type, designed to simplify market maker compliance with IEX Rule 11.151 (Market Maker Obligations), and make a conforming change regarding connectivity within the Exchange System.

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

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

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

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

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

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

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

IEX is filing this rule change proposal to reintroduce a Market Maker Peg order type. IEX previously had a Market Maker Peg order type<sup>6</sup>, which it retired in 2020<sup>7</sup> because at the time there were no Exchange-registered market makers.<sup>8</sup> As described below, IEX's proposed new order type is almost identical to its original, Commission-approved, market maker peg order type, with the exception that the new Market Maker Peg order will have tighter quoting spreads than are required by IEX Rule 11.151.

Background

IEX Rule 11.151 (Market Maker Obligations) requires market makers for each

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<sup>6</sup> See Securities Exchange Act Release No. 81482 (August 25, 2017), 82 FR 41452 (August 31, 2017) (SR-IEX-2017-22) (Approval Order).

<sup>7</sup> See Securities Exchange Act Release No. 89146 (June 24, 2020), 85 FR 39251 (June 24, 2020) (SR-IEX-2020-07).

<sup>8</sup> See generally IEX Rules 11.150 and 11.151.

stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid (“NBB”) and National Best Offer (“NBO”),<sup>9</sup> as appropriate. In addition to the market maker quoting and pricing obligations set forth in the Exchange’s rules, market makers must meet their obligations under Rule 15c3-5 under the Act (the “Market Access Rule”)<sup>10</sup> and Regulation SHO.<sup>11</sup>

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as “all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.”<sup>12</sup>

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a “locate” for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.<sup>13</sup> While there are certain exceptions to some of the requirements of Regulation

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<sup>9</sup> As defined by Regulation NMS Rule 600(b)(50). 17 CFR 242.600(50); see also IEX Rule 1.160(u).

<sup>10</sup> 17 CFR 240.15c3-5.

<sup>11</sup> 17 CFR 242.200 through 204.

<sup>12</sup> See supra note 10.

<sup>13</sup> See supra note 11.



SHO where a market maker is engaged in bona-fide market making activities,<sup>14</sup> the availability of those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg order.

### Proposed Rule

The Exchange is proposing to reintroduce an optional Market Maker Peg order type, which will be identical to the previously approved order type, with the exception of the tighter quoting obligations discussed below. The Market Maker Peg order type is designed to simplify market maker compliance with the continuous quoting and pricing obligations in IEX Rule 11.151(a) in a manner consistent with compliance with the Market Access Rule and Regulation SHO. The Market Maker Peg order, as proposed, is not only almost identical to IEX's previously approved Market Maker Peg order type<sup>15</sup>, it is also substantially similar to equivalent order types offered by other market centers, including Cboe BZX Exchange, Inc. ("Cboe BZX"), Nasdaq Stock Market LLC

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<sup>14</sup> See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO's "locate" requirement for market makers engaged in bona fide market making that may need to facilitate customer orders in a fast-moving market without being subject to the possible delays associated with complying with such requirement. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO's "locate" requirement). See also Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO's "locate" requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.190(b)(17) for eligibility for the bona-fide market making exception to the "locate" requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer's close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

<sup>15</sup> See *supra* note 6.

(“Nasdaq”), and Cboe EDGX Exchange, Inc. (“Cboe EDGX”).<sup>16</sup> Specifically, the Market Maker Peg order would be a one-sided limit order and, similar to other peg orders available to IEX Members<sup>17</sup>, priced in reference to or “pegged” to the NBB or NBO,<sup>18</sup> but is distinguishable in that like all other exchange market maker peg orders, it would always be displayed. In addition, a new timestamp is created for the order each time that it is automatically adjusted in accordance with the proposed rule. And Market Maker Peg orders may only be entered by a registered market maker, as defined in IEX Rule 11.150.

The Exchange believes that this order-based approach would provide an effective compliance tool to facilitate market makers’ compliance with IEX Rule 11.151(a), while also enabling compliance with the requirements of the Market Access Rule and Regulation SHO. Specifically, market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers using Market Maker Peg orders would be able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also facilitating compliance with their Exchange market making obligations. In this regard, the Market Maker Peg order does not ensure that the market maker is satisfying the requirements of the Market Access Rule, such as maintaining a system of risk management and supervisory controls reasonably designed to manage the risk of its market access business activity<sup>19</sup>, or of Regulation SHO, including the satisfaction of the locate requirements of Regulation SHO Rule 203(b)(1) or an exception

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<sup>16</sup> See e.g., Cboe BZX Rule 11.9(c)(15), Nasdaq Rule 4702(b)(7), and Cboe EDGX Rule 11.8(e).

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

<sup>18</sup> See IEX Rule 11.190(a)(3).

<sup>19</sup> See *supra* note 10.

thereto.<sup>20</sup> Market makers must continue to perform the necessary checks to comply with both the Market Access Rule and Regulation SHO, prior to entry of a Market Maker Peg order.

The Market Maker Peg order would be limited to registered market makers<sup>21</sup> and would have its price automatically set and adjusted by the System<sup>22</sup>, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quoting and pricing obligations.<sup>23</sup> Specifically, upon entry or at the beginning of the Regular Market Session, as applicable, the entered bid or offer is automatically priced by the System at the Market Maker Peg Designated Percentage away from the then current NBB or NBO, as applicable, or if there is no NBB or NBO, at the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. Proposed IEX Rule 11.190(b)(17)(A) defines the "Market Maker Peg Designated Percentage" as eight (8) percentage points for all securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Market Maker Peg Designated Percentage shall be twenty (20) percentage points. For example, if the NBB of a security is \$10 and the Market Maker Peg Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would be \$9.20. Market makers may submit Market Maker Peg orders to the Exchange starting at the beginning of the Pre-Market Session, but the order will not be executable or automatically priced until the beginning of the Regular Market Session and

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<sup>20</sup> 17 CFR 242.203(b)(1).

<sup>21</sup> See IEX Rule 11.150.

<sup>22</sup> See IEX Rule 1.160(n).

<sup>23</sup> The Market Maker Peg order is one-sided, and thus a market maker seeking to use Market Maker Peg orders to comply with the Exchange's continuous two-sided quotation requirements would need to submit both a bid and an offer using the order type.

will expire at the end of the Regular Market Session.

IEX also proposes to define, in proposed IEX Rule 11.190(b)(17)(B), a new term, “Market Maker Peg Defined Limit”, as nine and one half (9.5) percentage points for all securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Market Maker Peg Defined Limit shall be twenty-one and one half (21.5) percentage points.

Upon reaching the Market Maker Peg Defined Limit, the price of a Market Maker Peg order bid or offer will be adjusted by the System to the Market Maker Peg Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, the order will, by default, be the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. In the foregoing example, if the Market Maker Peg Defined Limit is 9.5% and the NBB increased to \$10.17, such that the displayed price of the Market Maker Peg order would be more than 9.5% away, the order would be repriced to \$9.36, or 8% away from the NBB.

If a Market Maker Peg order bid or offer moves a specified number of percentage points away from the Market Maker Peg Designated Percentage towards the then current NBB or NBO, which number of percentage points will be determined and published in a circular distributed to Members from time to time, the price of such bid or offer will be adjusted by the System to the Market Maker Peg Designated Percentage away from the then current NBB or NBO, as applicable. If there is no NBB or NBO, as applicable, the order will be adjusted by the System to the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. In the event

that pricing a Market Maker Peg order at the Market Maker Peg Designated Percentage away from the then current NBB and NBO, or, if no NBB or NBO, to the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order will be cancelled or rejected.

If, after entry, the Market Maker Peg order is priced based on the last reported sale from the single plan processor and such Market Maker Peg order is established as the NBB or NBO, the Market Maker Peg order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new NBB or NBO is established by a national securities exchange.

As noted above, this proposed reintroduction of the IEX Market Maker Peg order type is identical to the Market Maker Peg order type previously approved by the Commission, with the exception of the tighter quoting spreads that result from using the “Market Maker Peg Designated Percentage” and “Market Maker Peg Defined Limit” instead of the “Designated Percentage”<sup>24</sup> and “Defined Limit”<sup>25</sup> set forth in IEX’s Market Maker Obligations rule. Specifically, the Market Maker Obligations rule sets the Designated Percentage at 28% below/above the NBB/NBO, and 30% below/above the NBB/NBO at the market open and close for stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. And the Market Maker Obligations rule sets the Defined Limit for those same stocks to be 29.5% below/above the NBB/NBO, and 31.5% below/above the NBB/NBO at the market open and close. For stocks that are included in the S&P 500® Index, Russell 1000® Index,

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<sup>24</sup> See IEX Rule 11.151(a)(6).

<sup>25</sup> See IEX Rule 11.151(a)(7).

and a pilot list of Exchange Traded Products; the Designated Percentage and Defined Limit would be the same as the Market Maker Peg Designated Percentage and Market Maker Peg Defined Limit, respectively. Thus, as proposed, market makers using the optional IEX Market Maker Peg order type will quote at narrower spreads than required by IEX Rule 11.151 for stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products.

IEX proposes to incorporate a tighter quoting structure for the Market Maker Peg order type in order to simplify technical complexities in the design of the order type associated with treating all stocks equally. Moreover, IEX believes that tighter displayed quoting spreads could help to increase access to displayed liquidity being posted by IEX market makers.

The Exchange notes that notwithstanding the availability of the proposed Market Maker Peg order functionality, a market maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of IEX Rule 11.151. Furthermore, a market maker would not be required to use the Market Maker Peg order type and can instead submit its own quotes to satisfy its quoting and pricing obligations for any securities for which it is a registered market maker<sup>26</sup>.

Market Maker Peg orders, like all incoming orders, will be subject to 350 microseconds of inbound latency<sup>27</sup> from the IEX point-of-presence (“POP”) before reaching the System.<sup>28</sup> Each time a Market Maker Peg order is automatically adjusted by the System in accordance with this proposed rule change (in response to a change in the

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<sup>26</sup> See IEX Rule 11.151(a)(1).

<sup>27</sup> See IEX Rule 11.510(b)(1).

<sup>28</sup> See IEX Rule 11.510(a).

NBB or NBO), the modified order instruction will be subject to 350 microseconds of latency between the Market Maker Peg order repricing logic (i.e., the process by which the System determines that the price of the Market Maker Peg order should be adjusted) and the Order Book<sup>29</sup> (to be equivalent to the 350 microseconds of inbound latency for all incoming orders) and all outbound communications to the market maker related to the modified order instruction will be subject to 37 microseconds of latency between the Market Maker Peg order repricing logic and the POP (to be equivalent to the 37 microseconds of outbound latency that a market maker would have to wait for order entry confirmation), pursuant to IEX Rule 11.510(c)(1).<sup>30</sup> In addition, a new timestamp is created for the order each time that it is automatically adjusted by the System in accordance with the proposed rule. This approach is designed so that a market maker using a Market Maker Peg order to facilitate compliance with the Exchange's continuous quoting and pricing obligations is in the same position as a market maker updating its own quote, whose orders and order modification instructions would be subjected to a 350-microsecond inbound latency and 37-microsecond outbound latency.

The Exchange also proposes to make a conforming change to IEX Rule 11.510(c)(1) regarding connectivity, to provide that, pursuant to IEX Rule 11.190(b)(17), each time a Market Maker Peg order is automatically adjusted by the System, all inbound communications related to the modified order instruction will be subject to a 350-microsecond latency and all outbound communications related to the modified order instruction will be subject to a 37-microsecond latency between the Market Maker Peg order repricing logic and the Order Book.

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<sup>29</sup> See IEX Rule 1.160(p).

<sup>30</sup> See proposed edits to IEX Rule 11.510(c)(1).

The Exchange plans to implement the proposed changes in December 2021 or January 2022, subject to the effectiveness of filing with the Commission. The Exchange will announce the implementation date of the proposed changes by Trader Alert at least 10 business days in advance of such implementation date and within 90 days of the effectiveness of this proposed rule change.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>31</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>32</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. As noted above, the Exchange believes that the proposed rule is designed to simplify market maker compliance with the minimum continuous quoting and pricing obligations, as well as facilitate market maker compliance with the requirements of the Market Access Rule and Regulation SHO.

Specifically, the Exchange believes that simplifying compliance with this rule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it will provide a simplified means by which market makers may offer liquidity, using a tighter quoting spread than the market maker obligations require, even in circumstances where they are not willing to quote at the inside market. As a result, in circumstances where

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<sup>31</sup> 15 U.S.C. 78f.

<sup>32</sup> 15 U.S.C. 78f(b)(5).



liquidity available at displayed prices closer to the inside than the price of a Market Maker Peg order is exhausted during an aggressive market-wide sweep, the Market Maker Peg order may nevertheless be available to support executions at prices that are at least within the applicable Market Maker Peg Designated Percentage or Market Maker Peg Defined Limit. Moreover, the methodology for repricing Market Maker Peg orders is consistent with the requirements of the Act because it is designed to ensure that the displayed price of the order is at least within the applicable Market Maker Peg Designated Percentage or Market Maker Peg Defined Limit, as applicable.

The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act<sup>33</sup> in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that offering the Market Maker Peg order to market makers exclusively is consistent with fair competition among brokers and dealers in that market makers have chosen to subject themselves to the obligations of IEX Rule 11.151, and the benefit conferred on such market participants by this order type is commensurate with such obligations. Furthermore, all Members are eligible to apply for registration as a market maker under Rule 11.150 on a fair and equal basis.

The Exchange also believes that it is fair and reasonable for all inbound communications related to the repricing of a Market Maker Peg order to be subject to 350 microseconds of latency and for all outbound communications related to the repricing of a Market Maker Peg order to be subject to 37 microseconds of latency, each between the Market Maker Peg repricing logic and the Order Book. As noted in the Purpose section,

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<sup>33</sup> 15 U.S.C. 78k-1.

this approach is designed so that a market maker using a Market Maker Peg order to facilitate compliance with the Exchange's continuous quoting and pricing obligations is in the same position as a market maker updating its own quote, whose order instructions would be subject to 350 microseconds of inbound latency and 37 microseconds of outbound latency. Similarly, price adjustments to Market Maker Peg orders will experience the same latency as other displayed limit orders entered on the Exchange.

Accordingly, the Exchange believes that it is consistent with the public interest and the protection of investors to reprice Market Maker Peg orders subject to a 350-microsecond latency for all inbound communications related to the modified order instruction and a 37-microsecond latency for all outbound communications related to the modified order instruction in the interest of ensuring that market makers using the Market Maker Peg order type will not have any unfair advantage over market makers that update their own quotes, as well as with other market participants using displayed orders.

Furthermore, the Exchange believes that it is consistent with the public interest and the protection of investors to apply a new timestamp to a Market Maker Peg order each time it is repriced so that a Market Maker Peg order does not achieve execution priority superior to a displayed order entered at that price earlier in time. Accordingly, market makers will not have any unfair advantage over a market maker updating its own quote, or other market participants using displayed orders on the Exchange.

Additionally, the Exchange believes that the proposed conforming rule change to IEX Rule 11.510(c)(1) is consistent with the protection of investors and the public interest in that it is designed to provide clarity to market participants regarding Market Maker Peg order repricing methodology.

Finally, IEX notes that the Commission previously approved an almost identical market maker peg order type.<sup>34</sup> As described in the Purpose section, the one difference between this proposed Market Maker Peg order type and IEX's previous market maker peg order type is that this order type will apply the same Market Maker Peg Designated Percentage and Market Maker Peg Defined Limit to all stocks, irrespective of if they are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products . IEX believes this modification is consistent with the protection of investors and helps perfect the mechanism of a free and open market because this proposal will result in Market Maker Peg orders resting on the Order Book quoting at the tighter limit that is only required for certain securities. IEX believes these tighter quote spreads would be of particular benefit to investors during times of high market volatility by making it more likely that a security will avoid so-called "stub quotes" that are so far away from the NBB or NBO that the quote is unlikely to be executed. Additionally, IEX notes that the proposed application of the tighter quote spreads to all Market Maker Peg orders will simplify the technical complexities in the design and functioning of the order type. Furthermore, IEX notes that the proposed Market Maker Peg order is an optional order type that may be used by any registered market maker to facilitate its compliance with their obligations but that market makers are free to manage their own quotes subject to the applicable quoting and pricing requirements of IEX Rule 11.151.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>34</sup> See supra note 6.

Specifically, the Exchange believes that the proposal will enhance the Exchange's competitiveness by providing market makers on IEX with a tool designed to facilitate quoting and offering liquidity even in circumstances where they are not willing to quote at the inside market. Based on informal discussion with market participants that serve as market makers on other trading centers, the Exchange believes that this functionality will be appealing to potential market makers, and therefore will make it more likely that market participants will choose to become registered market makers on the Exchange. This may, in turn, increase the extent of liquidity available on IEX and increase its ability to compete with other execution venues to attract orders that are seeking liquidity. The Exchange further notes that the Market Maker Peg order, as proposed, is substantially similar to equivalent order types offered by other market centers, including Cboe BZX, Nasdaq, and Cboe EDGX, and therefore will not impair market participants or other market centers from competing, but would in fact allow the Exchange to compete with existing functionality offered by competing market centers.<sup>35</sup> Moreover, there is no barrier to other exchanges adopting the same repricing functionality subject to the Commission rule filing process pursuant to Section 19(b) of the Act.

With regard to intra-market competition, the Exchange does not believe that the method of repricing Market Maker Peg orders will result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, as described in the Statutory Basis section, the proposed Market Maker Peg order type is an optional order type that would be available to IEX market makers that is designed so that market makers using Market Maker Peg orders will not be subject

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<sup>35</sup> See supra note 16.

to any competitive advantage compared to market makers updating their own quotes, or other market participants using displayed orders. Furthermore, as discussed in the Statutory Basis section, the Exchange believes that offering the Market Maker Peg order to market makers exclusively is consistent with fair competition among brokers and dealers in that market makers have chosen to subject themselves to the obligations of IEX Rule 11.151, and the benefit conferred on such market participants by this order type is commensurate with the obligations. Furthermore, all Members are eligible to apply for registration as a market maker under IEX Rule 11.150 on a fair and equal basis.

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

Written comments were neither solicited nor received.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)<sup>36</sup> of the Act and Rule 19b-4(f)(6)<sup>37</sup> thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>38</sup> because it is consistent with the protection of investors and the public interest in that it is designed to incentivize the entry of additional

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<sup>36</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>37</sup> 17 CFR 240.19b-4(f)(6).

<sup>38</sup> 17 CFR 240.19b-4(f)(6).

displayed orders on IEX by facilitating prospective new market makers' ability to fulfill their quoting obligations, thereby 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 almost identical to an IEX rule filing previously approved by the Commission, with the only change being the use of tighter quoting spreads for certain stocks, as discussed in the Purpose section.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>39</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>40</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. IEX believes that this proposed rule change is consistent with the protection of investors and the public interest because it is restoring an order type previously approved by the Commission (therefore raising no new or novel issues), with the only difference being that this Market Maker Peg order will apply the tighter market maker quoting spreads to all securities for which a market maker posts a Market Maker Peg order. Accordingly, the Exchange has respectfully requested that the Commission waive the 30-day operative delay so that IEX market makers can immediately use the Market Maker Peg order type to help satisfy their quoting obligations. IEX believes that allowing market makers to begin using the Market Maker Peg order type immediately upon effectiveness of this rule change will potentially increase the displayed liquidity on IEX's Order Book to the benefit all investors, which will serve the public interest.

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<sup>39</sup> 17 CFR 240.19b-4(f)(6).

<sup>40</sup> 17 CFR 240.19b-4(f)(6)(iii).

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)<sup>41</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2021-17 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-2021-17. 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

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<sup>41</sup> 15 U.S.C. 78s(b)(2)(B).

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](http://www.iextrading.com). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2021-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

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<sup>42</sup> 17 CFR 200.30-3(a)(12).



Exhibit 5 – Text of Proposed Rule Change

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

CHAPTER 11. TRADING RULES

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Rule 11.190. Orders and Modifiers

Users may enter into the System the types of orders listed in this IEX Rule 11.190, subject to the limitations set forth in this IEX Rule or elsewhere in the IEX Rules. Order, modifier, and parameter combinations which are disallowed by the Exchange may be rejected, ignored, or overridden by the Exchange, as determined by the Exchange to facilitate the most orderly handling of User instructions.

(a) No change.

(b) Order Parameters.

(1)-(16) No change.

(17) Market Maker Peg Order. A limit order that, upon entry or at the beginning of the Regular Market Session, as applicable, the entered bid or offer is automatically priced by the System at the Market Maker Peg Designated Percentage (as defined in IEX Rule 11.190(b)(17)(A)) away from the then current NBB or NBO, as applicable, or if there is no NBB or NBO, at the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 11.151(a). For example, if the NBB is \$10 and the Market Maker Peg Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would be \$9.20. Users may submit Market Maker Peg orders to the Exchange starting at the beginning of the Pre-Market Session, but the order will not be executable or automatically priced until the beginning of the Regular Market Session, and will expire at the end of the Regular Market Session. Upon reaching the Market Maker Peg Defined Limit (as defined in IEX Rule 11.190(b)(17)(B)), the price of a Market Maker Peg order bid or offer will be adjusted by the System to the Market Maker Peg Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, the order will, by default, be the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. In the foregoing example, if the Market Maker Peg

Defined Limit is 9.5% and the NBB increased to \$10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.36, or 8% away from the NBB. If a Market Maker Peg order bid or offer moves a specified number of percentage points away from the Market Maker Peg Designated Percentage towards the then current NBB or NBO, which number of percentage points will be determined and published in a circular distributed to Members from time to time, the price of such bid or offer will be adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as applicable. If there is no NBB or NBO, as applicable, the order will be adjusted by the System to the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that pricing a Market Maker Peg order at the Market Maker Peg Designated Percentage away from the then current NBB and NBO, or, if no NBB or NBO, to the Market Maker Peg Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order will be cancelled or rejected. If, after entry, the Market Maker Peg order is priced based on the last reported sale from the single plan processor and such Market Maker Peg order is established as the NBB or NBO, the Market Maker Peg order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new NBB or NBO is established by a national securities exchange. Market Maker Peg orders are not eligible for routing pursuant to Rule 11.230(b) and are always displayed on the Exchange. Notwithstanding the availability of Market Maker Peg order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 11.151. Upon entry, and each time a Market Maker Peg order is automatically adjusted by the System thereafter in accordance with this rule, all inbound communications related to the modified order instruction are subject to 350 microseconds of latency and all outbound communications related to the modified order instruction are subject to 37 microseconds of latency between the Market Maker Peg order repricing logic and the Order Book, pursuant to Rule 11.510(c)(1). In addition, a new timestamp is created for the order each time that it is automatically adjusted by the System in accordance with the proposed rule. Market Maker Peg orders may only be entered by a registered Market Maker.

(A) For purposes of this IEX rule, the “Market Maker Peg Designated Percentage” shall be eight (8) percentage points for all securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Market Maker Peg Designated Percentage shall be twenty (20) percentage

points.

(B) For purposes of this IEX rule, the “Market Maker Peg Defined Limit” shall be nine and one half (9.5) percentage points for all securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Market Maker Peg Defined Limit shall be twenty-one and one half (21.5) percentage points.

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#### Rule 11.510. Connectivity

(a) No change.

(b) No change.

(c) System Connectivity.

(1) Order Book Processes and Order Execution. Order Book processing and order execution on the Order Book occur within the System and do not traverse the connectivity infrastructure between the System and the POP. Notwithstanding the foregoing, in the case of a routable order the order is initially delivered to the System routing logic within the System, which will then route all or a portion of the order to the Order Book, in accordance with the System routing logic. All inbound communications (including, without limitation, order messages and cancel messages from the System routing logic to the Order Book are subject to 350 microseconds of latency between the System routing logic and the Order Book (which is in addition to the inbound latency described in paragraph (b)(1) of this IEX Rule 11.510); all outbound communications (including, without limitation, execution report messages found in the Exchange’s FIX Specification) from the Order Book to the System routing logic are subject to 37 microseconds of latency between the Order book and the System routing logic (which is in addition to the outbound latency described in paragraph (b)(2) of this IEX Rule 11.510). Furthermore, pursuant to Rule 11.190(b)(17), each time a Market Maker Peg order is automatically adjusted by the System, all inbound communications related to the modified order instruction are subject to 350 microseconds of latency and all outbound communications related to the modified order instruction are subject to 37 microseconds of latency between the Market Maker Peg order repricing logic and the Order Book.

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