

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87798; File No. SR- IEX-2019-14)

December 18, 2019

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 11.190(e) to Expand the Exchange's Existing Anti-Internalization Functionality and Make Conforming and Clarifying Changes to IEX Rule 11.190(e) and Other IEX Rules

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

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

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to amend IEX Rule 11.190(e) to expand the Exchange's existing anti-internalization functionality and make conforming and clarifying changes to IEX Rule 11.190(e) and other IEX rules. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act⁶ and provided the Commission 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

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).

⁷ 17 CFR 240.19b-4.

www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190(e) to expand its existing anti-internalization functionality and make conforming and clarifying changes to IEX Rule 11.190(e) and other IEX rules.

IEX currently offers optional anti-internalization functionality to Users⁸ that enables a User to prevent two of its orders from executing against each other. Users can set anti-internalization functionality to apply at the market participant identifier ("MPID") or User level. In order to utilize anti-internalization functionality, a User adds a unique User-determined "Anti-Internalization Group ("AGID") modifier" on a new order message. When a User designates an active order⁹ with an AGID modifier, the order is prevented from executing against a resting

⁸ Pursuant to IEX Rule 1.160(qq), a User means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130. Member is defined in IEX Rule 1.160(s), and Sponsored Participant is defined in IEX Rule 1.160(ll).

⁹ See IEX Rule 1.160(b).

opposite order designated with the same AGID modifier and originating from the same MPID or Exchange User (referred to in IEX Rule 11.190(e) as a “group type”). Instead of executing, the System¹⁰ cancels the older of the orders back to the User. Determination of “older” is based upon the time the order is received by the System, including by initial order entry, User revision (i.e., cancel/replace), or returning to the System from routing.

As provided in the supplementary material to IEX Rule 11.190(e), IEX’s anti-internalization functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using the AGID modifier need to take appropriate steps to ensure public customer orders that do not execute because they were subject to anti-internalization ultimately receive the same execution price (or better) than they would have originally obtained if execution of the order was not inhibited by anti-internalization. Furthermore, Market Makers¹¹ and other Users must not use the AGID modifier to evade the firm quotation obligation, as specified in IEX Rule 11.151(b). And the AGID modifier must be used in a manner consistent with just and equitable principles of trade.¹²

Proposal

In order to provide additional flexibility to Users, the Exchange proposes to expand the anti-internalization functionality it offers by adding four additional anti-internalization modifiers, to be referred to as Anti-Internalization Qualifier (“AIQ”) modifiers, each of which would implement anti-internalization in a different manner.¹³ In order to provide additional clarity, the

¹⁰ See IEX Rule 1.160(nn).

¹¹ See IEX Rule 11.150.

¹² See IEX Rule 11.190(e) Supplementary Material .01-.03.

¹³ The functionality currently offered by the AGID modifier will become one of the five AIQ modifiers.

Exchange also proposes to restructure the terminology to identify orders subject to anti-internalization. As proposed, instead of using the term “AGID” or “AGID modifier” to identify orders that will not trade with each other, the Exchange will introduce the term “AIQ identifier” to refer to the unique User-supplied identifier included on an order message designating the order as subject to anti-internalization. Orders that have the same AIQ identifier and originate from the same MPID or Exchange User, as specified by the User,¹⁴ will be part of the same “AIQ group.” As with the existing AGID modifier, orders within the same AIQ group will be prevented from executing against each other.

In addition, a User can also specify the type of anti-internalization functionality to be applied by including one of the following five AIQ modifiers on the order message, which specifies how two orders subject to anti-internalization would interact:

1. Cancel Oldest (“CO”). An active order marked with the CO AIQ modifier will not execute against opposite side resting interest marked with any AIQ modifier within the same AIQ group. The older order will be canceled back to the originating User. In accordance with User instructions, the newer order will be cancelled back to the originating User or remain on or post to the Order Book.¹⁵ This option is the existing anti-internalization functionality currently offered by the Exchange, and the default AIQ modifier.
2. Cancel Newest (“CN”). An active order marked with the CN AIQ modifier will not execute against opposite side resting interest marked with any AIQ modifier within the same AIQ group. The newer order will be cancelled back to the originating User. The older order will remain on the Order Book.
3. Cancel Both (“CB”). An active order marked with the CB AIQ modifier will not execute against opposite side resting interest marked with any AIQ modifier within the same AIQ group. The entire size of both orders will be cancelled back to the originating User.
4. Cancel Smallest (“CS”). An active order marked with the CS AIQ modifier will not execute against opposite side resting interest marked with any AIQ modifier within

¹⁴ A Member may elect to enable anti-internalization functionality on an IEX Port Request Form, designating whether such functionality should be applied on an MPID or User basis.

¹⁵ See IEX Rule 1.160(p).

the same AIQ group. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the smaller of the two orders will be cancelled back to the originating User and the larger order will remain on or post to the Order Book.

5. Decrement Larger – Original Order Quantity (“DLO”). An active order marked with the DLO AIQ modifier will not execute against opposite side resting interest marked with any AIQ modifier within the same AIQ group. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the size of the larger order will be decremented by the size of the smaller order, and the smaller order will be cancelled back to the User. However, if the order with the newer timestamp is marked with the DLO AIQ modifier and the older order is not, and if the newer order is smaller than the older order, then both orders will be canceled back to the originating User. In addition, routable orders designated with the DLO AIQ modifier will be rejected.¹⁶

If a User includes an AIQ group identifier, but not an AIQ modifier on an order, the Exchange will apply the default Cancel Oldest AIQ modifier to the order. If the AIQ modifiers on two orders within the same AIQ group that would otherwise execute against each other are not the same (including application of the default Cancel Oldest AIQ modifier), the AIQ modifier on the order with the newer timestamp will control the interaction between the two orders. Determination of “newer” and “older” would be based upon each order’s timestamp, as specified in IEX Rule 11.220(a)(1)(C).¹⁷

The proposed rule change is designed to provide additional flexibility to Users in how they implement self-trade prevention provided by the Exchange, and thereby better manage their order flow and prevent undesirable executions or the potential for “wash sales” that may occur as

¹⁶ Due to technical complexities, the System is not currently able to apply the DLO AIQ modifier to routable orders.

¹⁷ Existing rule text in IEX Rule 11.190(e) provides that “older” is based upon the time the order is received by the System, including by initial order entry, User revision (i.e., cancel/replace), or returning to the System from routing. The Exchange proposes to describe the concept of “older” as well as “newer” with reference to an order’s timestamp in order to provide more clarity. No substantive change is proposed.

a result of the speed of trading in today's marketplace. Based on informal discussions with Members, the Exchange believes that the proposed additional types of anti-internalization functionality will be useful to Members in implementing their own compliance controls. And the additional AIQ functionality may assist Users in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

The Exchange notes that, as with the current anti-internalization functionality offered by IEX, use of the proposed new AIQ modifiers will not alleviate, or otherwise exempt, Users from their best execution obligations. As such, market participants using the AIQ modifiers will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.¹⁸ Further, as with current rule provisions, Market Makers and other Users may not use AIQ functionality to evade the firm quote obligation, as specified in IEX Rule 11.151(b), and the AIQ functionality must be used in a manner consistent with just and equitable principles of trade.¹⁹ For these reasons, the Exchange believes the proposed new AIQ modifiers offer Users enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

IEX also proposes to make several conforming and clarifying changes to IEX Rule 11.190(e) and other IEX rules, as described below:

¹⁸ See Supplementary Material .01 to IEX Rule 11.190(e).

¹⁹ See Supplementary Material .02 and .03 to IEX Rule 11.190(e).

- Change the rule title of IEX Rule 11.190(e) from “Anti-Internalization Group Identifier (“AGID”) Modifier” to “Anti-Internalization (“AIQ”) Functionality” to reflect the expanded new functionality.
- Add a new subparagraph (2) of IEX Rule 11.190(e) to set forth the five AIQ modifiers to be offered by IEX, as described above, and renumber existing subparagraphs (2) – (5) as (3) – (6).
- Replace references to the “group type” with the term AIQ group in IEX Rule 11.190(e).
- Revise the text of subparagraph (5) of IEX Rule 11.190(e) (previously subparagraph (4)) regarding compatibility of Book Recheck and treatment of an active order that has been invited to Recheck against the Order Book to reflect the new AIQ modifiers. Previously, the subparagraph stated that if the active order that has been invited to Recheck against the Order Book is older than a resting order subject to anti-internalization, the active order will be cancelled in accordance with the existing anti-internalization functionality that cancels the older order. As proposed, the subparagraph clarifies that the active order will be treated as older or newer based upon its timestamp. As set forth in the new IEX Rule 11.190(e), the AIQ modifier on the newer of the two orders will control the interaction between the two orders subject to anti-internalization.
- Replace the references to the “AGID modifier” with references to the “AIQ functionality” in Supplementary Materials .01-.03 to IEX Rule 11.190(e).
- Replace all references to “AGID modifiers” with “AIQ modifiers” in IEX Rules 11.231(b)(1), 11.350(c)(2)(C), 11.350(d)(2)(C), 11.350(e)(2)(D), 11.350(f)(2)(F), and

11.350(f)(3)(B)(iii).

- Revise the rule text in Rule 11.151(b) (“Market Maker Obligations”) that refers to quotations that are “designated with an AGID modifier which is the same as that of an active opposite side order and originating from the same group type” to quotations that are “part of the same AIQ group” and replace “AGID modifiers” with “AIQ functionality” in the last sentence.

Replace the text in Rule 11.220(7) (“Priority of Orders – Anti-Internalization”) that refers to orders “entered under the same AGID modifier” with “that are part of the same AIQ group”. In addition, IEX proposes to add language referencing IEX Rule 11.190(e) to specify that orders subject to anti-internalization that are part of the same AIQ group will not execute against each other as set forth in IEX Rule 11.190(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5),²¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because the addition of four new AIQ modifiers will provide Exchange Users with additional flexibility with respect to how they implement self-

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

trade protections provided by IEX. Users that prefer the current anti-internalization functionality offered by the Exchange can continue to use it without any modification (i.e., if the User does not specify the AIQ modifier for two orders subject to anti-internalization, the Exchange will cancel the older of the two orders, as is currently done for orders using the AGID modifier). And Users that prefer to implement anti-internalization in a different manner would be provided with the proposed new functionality that may better support their trading strategies.

As noted in the Purpose section, IEX believes that providing Users with more flexibility and control over the interactions of their orders will better prevent undesirable executions or the potential for “wash sales” that may occur as a result of the speed of trading in today’s marketplace. And the additional AIQ functionality may better assist Users in complying with certain ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

Further, the Exchange believes that providing enhanced AIQ functionality may streamline certain regulatory functions by reducing false positive results that may occur on wash trading surveillance reports when two orders in the same AIQ group are executed, notwithstanding that the transaction may not constitute a wash trade.²²

The Exchange also believes that it is consistent with the Act to provide that the Cancel Oldest AIQ modifier is the default modifier if a User does not include an AIQ modifier on an order subject to anti-internalization because such functionality is less complex than the other AIQ modifiers since it simply cancels the older order. The Cancel Oldest AIQ modifier is also identical to the current functionality, and therefore the Exchange believes that a User that fails to

²² For example, the Exchange believes that transactions that originate from unrelated algorithms or from separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades.

include a specific modifier would most likely expect the cancel oldest functionality to apply.

Additionally, the Exchange believes that it is consistent with the Act for the AIQ modifier on the newer order to control the interaction between two orders subject to anti-internalization that would otherwise execute, since the newer order would likely represent the User's more current trading objective.

Further, the Exchange believes that the proposed conforming and clarifying rule changes, as discussed in the Purpose section, are consistent with the protection of investors and the public interest because they will simply conform terminology and provide clarity and consistency on how the Exchange's anti-internalization functionality works.

Finally, the Exchange notes that the proposed additional anti-internalization functionality is substantially similar to the anti-internalization interactions offered by other national securities exchanges.²³ Consequently, the Exchange does not believe that the proposed rule change raises any new or novel issues not already considered by the Commission.

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 offering additional anti-internalization functionality may enhance its ability to compete with other exchanges that offer such additional functionality. Further, the proposed rule change is designed to enhance the anti-internalization functionality offered to Users by providing additional flexibility over the manner in which their orders subject to anti-internalization controls interact, while assisting Users with compliance with the securities laws

²³ See, e.g., Cboe BZX Exchange, Inc. ("Cboe BZX") Equities Rule 11.9(f); Cboe BYX Exchange, Inc. ("Cboe BYX") Equities Rule 11.9(f); CBOE EDGA, Inc. ("EDGA") Rule 11.10(d); CBOE EDGX, Inc. ("EDGX") Rule 21.1(g).

that prohibit wash trading as well as ERISA requirements. The Exchange also notes that the proposed new functionality, like the current anti-internalization functionality, is completely optional and Users can determine on an order-by-order, MPID, or User basis whether to apply anti-internalization protections to orders submitted to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, competing exchanges have similar anti-internalization functionality. Moreover, there is no barrier to other national securities exchanges adopting similar anti-internalization protections.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Users will continue to be eligible to use the Exchange's anti-internalization functionality. While not every User engages in a business that might involve risks of self-matching against its own orders, for the Users that do face that risk, the proposed additional anti-internalization functionality will help the User with its own compliance with the securities laws and ERISA. Further, implementation of anti-internalization functionality impacts only a User's orders, and not the orders of other Members.

Finally, the proposed conforming and clarifying rule changes, as discussed in the Purpose section, are not designed to address any competitive issue, but rather to conform terminology and provide clarity and consistency on the operation of the Exchange's anti-internalization functionality.

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

An IEX employee exchanged informal email messages responding to a Member that had inquired as to whether IEX would be expanding the types of AIQ functionality available. The email messages discussed the additional AIQ functionality that is the subject of this proposed rule change. The Member provided feedback that was supportive of the proposed rule change.

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)²⁴ of the Act and Rule 19b-4(f)(6)²⁵ 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-4²⁶ because, as discussed above, the additional functionality is based on similar rules of other exchange.²⁷ Thus, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission in connection with existing anti-internalization functionality offered by IEX and other national securities exchanges. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act²⁸ and paragraph (f)(6) of Rule 19b-4

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ See supra note 23.

²⁸ 15 U.S.C. 78s(b)(3)(A).

thereunder.²⁹

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)³⁰ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2019-14 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2019-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁹ 17 CFR 240.19b-4.

³⁰ 15 U.S.C. 78s(b)(2)(B).

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 Room, 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2019-14 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.³¹

J. Matthew DeLesDernier
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(12).