SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98988; File No. SR-IEX-2023-13)

November 20, 2023

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Introduce a New Post Only Order Parameter Instruction

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 November 15, 2023, 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 Exchange. 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 the Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act[4], and Rule 19b-4 thereunder[5], the Exchange is filing with the Commission a proposed rule change to introduce a new Post Only order parameter instruction. The Exchange has designated this proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act[6] 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 statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190 to introduce a new Post Only order parameter instruction.[8] As proposed, a Post Only parameter instruction would be available for a displayable, non-routable order priced at or above $1.00 per share (a "Post Only order"). A Post Only order would not remove liquidity from the IEX Order Book[9] except in specific circumstances as described below. The Post Only order is designed to incentivize the posting of displayed liquidity on the Exchange and to offer IEX Members[10] greater determinism and flexibility in posting liquidity on the Exchange. IEX also proposes to introduce a new Trade Now[11] order instruction, which would allow certain resting non-displayed orders (described below) to convert into an executable order that removes liquidity against an incoming Post Only

[8] See Proposed IEX Rule 11.190(b)(20).

[9] See IEX Rule 1.160(p).

[10] See IEX Rule 1.160(s).

[11] See Proposed IEX Rule 11.190(b)(21).

order that would otherwise lock the resting order (a transaction in which the Post Only order would be the maker of liquidity and the Trade Now order would be the taker of liquidity). The Trade Now instruction, when paired with Post Only orders, is designed to encourage more executions of marketable orders at IEX. In addition, IEX proposes to make conforming edits to several order type definitions contained in IEX Rule 11.190 to specify which order types may be submitted as a Post Only order, and which order types will include the Trade Now instruction, either by default or optionally.

IEX notes that every other national securities exchange that trades equities offers nearly identical post only order types[12] and most also offer trade now functionality[13] to their members. As proposed, IEX's Post Only order type is structured in a substantially similar manner, with minor differences (described below) limited to the orders for which the functionality is available rather than the manner in which is applied.[14]

Post Only Orders

As described in Proposed IEX Rule 11.190(b)(20), a Post Only order would be a displayed, non-routable limit[15] or Discretionary Limit[16] order that would not remove liquidity from the IEX Order Book other than in the following circumstances:

First, a Post Only order will remove contra-side liquidity from the IEX Order Book if the value of such execution when removing liquidity equals or exceeds the value of such execution if

---

[12] See, e.g., Cboe BZX Exchange, Inc. ("BZX") Rule 11.9(c)(6); MEMX Rule 11.6(l)(2); NASDAQ Stock Market LLC ("Nasdaq") Rule 4702(b)(4); MIAX Pearl Rule 2614(c); New York Stock Exchange ("NYSE") Rule 7.31(e)(2).

[13] See, e.g., BZX Rule 11.9(c)(12); NYSE Rule 7.31(d)(2)(B); Nasdaq Rule 4703(m).

[14] See infra notes 20, 22.

[15] See IEX Rule 11.190(a)(1).

[16] See IEX Rule 11.190(b)(7).

the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided (the "Sum of Fees"). To determine at the time of a potential execution whether the Sum of Fees when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, the Exchange will compare the price improvement (i.e., available execution price to trade on entry versus the limit price of the order) to the difference between the sum of the fees charged for such execution and the rebate that would be provided if the order posted to the IEX Order Book and subsequently provided liquidity.

Post Only orders by default would be subject to display-price sliding as set forth in IEX Rule 11.190(h)(1), but the Member may provide an optional instruction to cancel any untraded quantity of a Post Only order that would otherwise be subject to display-price sliding. Thus, during Regular Market Hours, if the limit price of the Post Only order locked or crossed an order on the IEX Order Book, depending upon the Member's instructions, the Post Only order would either slide to a price one Minimum Price Variant ("MPV")[17] less aggressive than the current Protected Quotation[18], or be canceled back to the Member. This functionality is identical to that of several other equities exchanges.[19]

IEX is also proposing that Post Only orders must be at least a round or mixed lot sized order on entry and must be displayed. Because this proposal is designed to incentivize displayed liquidity in general and price discovery in particular, IEX believes that it is appropriate to limit Post Only orders to those that could become Protected Quotations. IEX notes that although other exchanges allow Post Only orders to be non-displayed or to be displayed odd lot sized orders,

---

17 See IEX Rule 11.210.

18 See IEX Rule 1.160(bb).

19 See, e.g., BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(A)(ii).

until 2022, NYSE also did not allow non-displayed or displayed odd lot sized orders to use its post only functionality.[20] Additionally, IEX is proposing to not allow reserve[21] orders be Post Only orders. IEX notes that although other exchanges allow Post Only orders to be reserve orders, until recently, NYSE also did not allow reserve orders to use its post only functionality.[22] IEX believes its proposal to not allow reserve orders to be Post Only orders is consistent with its proposal to not allow non-displayed orders to be Post Only orders, because reserve orders have both a displayed and non-displayed portion. IEX also notes that because it charges the same amount for adding or removing non-displayed liquidity, the economic benefits of a Post Only order would not apply to a non-displayed order submitted to IEX.

Further, Proposed IEX Rule 11.190(b)(20) specifies that Post Only orders must have a time-in-force ("TIF") of DAY, GTX, SYS, or GTT because they will only trade during Regular Market Hours, and that they may not be an Intermarket Sweep Order, both because they are non-routable orders and because ISOs are meant to take liquidity resting on the Exchange and away markets while Post Only orders are designed to add displayed liquidity to IEX's Order Book.

Finally, the Post Only order parameter instruction would not be operative for orders to buy or sell a security priced below $1.00 per share. Thus, such orders that include the Post Only order parameter instruction would function in the same manner as regular displayed limit orders or D-Limit orders; they would remove contra-side liquidity from the IEX Order Book on entry without consideration of whether the Sum of Fees equals or exceeds the price improvement per share, and otherwise post to the IEX Order Book. IEX believes that this approach is appropriate

[20] See Securities Exchange Act Release No. 95209 (July 7, 2022), 87 FR 41832, 41835 (July 13, 2022) (SR-NYSE-2022-25).

[21] See IEX Rule 11.190(b)(2).

[22] See Securities Exchange Act Release No. 98891 (November 8, 2023), 88 FR 78407, 78408 (November 15, 2023) (SR-NYSE-2023-40).

in that IEX does not offer rebates for orders that add displayed liquidity priced below $1.00 so the economics for a Post Only order are less meaningful. IEX notes that this approach is similar to that of other exchanges with respect to securities priced below $1.00 per share.[23]

Trade Now Instruction

IEX also proposes to add IEX Rule 11.190(b)(21), to introduce the "Trade Now" order instruction. As proposed, Trade Now would be an instruction on an order resting on the IEX Order Book that, when locked by an incoming Post Only order that does not remove liquidity pursuant to Proposed IEX Rule 11.190(b)(20), causes such order to be converted to an executable order that removes liquidity against such incoming order. As proposed, non-displayed limit orders (including non-displayed portions of reserve[24] orders and non-displayed Discretionary Limit orders) would always include a Trade Now order instruction, while for Midpoint Peg[25], Fixed Midpoint Peg[26], Offset Peg[27], and Market Peg[28] orders the Trade Now instruction would be optional. IEX makes this proposal because the above four pegged order types are all able to book at prices between the NBB and the NBO, which means they all could match with (or be locked by) an incoming Post Only order. As proposed, a resting pegged order with the optional Trade Now instruction would be the taker of liquidity and the Post Only order would be the maker of liquidity (unless the Sum of Fees calculation caused the Post Only order to take liquidity on entry). IEX also has pegged order types that book one MPV less aggressive than the Primary Quotation, and it is not proposing to allow these orders to have a Trade Now

---

23 See, e.g., BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(i)(A).

24 See IEX Rule 11.190(b)(2).

25 See IEX Rule 11.190(b)(9).

26 See IEX Rule 11.190(b)(19).

27 See IEX Rule 11.190(b)(13).

28 See IEX Rule 11.190(b)(18).

instruction because they will not be able to match with (or be locked by) an incoming Post Only order.[29] Similarly, IEX is not proposing to allow resting Retail Liquidity Provider orders to have a Trade Now feature, because they are not eligible to trade with a Post Only order.[30]

The Trade Now instruction would provide non-displayed orders resting on the IEX Order Book with a greater ability to receive an execution when that resting order is locked by an incoming Post Only order, rather than creating the possibility of the incoming Post Only order locking the resting non-displayed order. Thus, the proposed Trade Now instruction assists in the avoidance of an internally locked IEX Order Book (notwithstanding that such lock would not be displayed by the Exchange) by facilitating the execution of orders that would otherwise lock each other.

If an incoming Post Only order matches with a resting non-displayed order on entry with the Trade Now instruction, the Post Only order would be treated as a displayed order and would receive a rebate of $0.0004 per share. The order with the Trade Now instruction, having become an executable taking order, would be charged $0.0010 per share, which is the same fee IEX charges for both non-displayed liquidity-adding and taking orders. Thus, the order with the Trade Now instruction is able to get an execution with no change to the fees it would be charged, while the Post Only order would also get an execution with the rebate the Member expects to receive when submitting a displayed order.

Conforming Changes

As described above, only certain order types are eligible to be Post Only orders. Therefore, IEX proposes to amend IEX Rules 11.190(b)(1) ("Displayed Order") and

29 See IEX Rules 11.190(b)(8) (Primary Peg order), 11.190(b)(10) (Discretionary Peg order), and 11.190(b)(16) (Corporate Discretionary Peg order).

30 See IEX Rule 11.190(b)(14).

11.190(b)(7) ("Discretionary Limit Order"), to specify that a displayed, non-routable, round or mixed lot limit or Discretionary Limit order may include a Post Only instruction, as defined in Proposed IEX Rule 11.190(b)(20).

Similarly, as described above, only certain order types are eligible to have a Take Now instruction. Therefore, IEX proposes to amend IEX Rules 11.190(a)(1), 11.190(b)(2), and 11.190(b)(7), to specify that non-displayed limit orders, non-displayed portions of reserve orders, and non-displayed Discretionary Limit orders will include a Trade Now instruction as defined in Proposed IEX Rule 11.190(b)(21). Because IEX proposes to allow Members to include a Trade Now instruction on pegged orders that could interact with a Post Only order, IEX is proposing to amend IEX Rules 11.190(b)(9), 11.190(b)(19), 11.190(b)(13), and 11.190(b)(18) to specify that a Member may include a Trade Now instruction with Midpoint Peg, Fixed Midpoint Peg, Offset Peg, and Market Peg orders, respectively.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Section 6(b)(5),[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable 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 it is designed to provide more flexibility

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

and opportunities for Members to add displayed liquidity to the Exchange. As noted in the Purpose section, Post Only orders, particularly when coupled with Trade Now functionality for some non-displayed orders, would provide fee determinism for Members seeking to add liquidity to the Exchange. This in turn is designed to encourage the posting of more displayed liquidity on the Exchange, and to the extent that such incentive is successful in increasing the overall liquidity pool available at IEX, all market participants, including takers of liquidity, will benefit. Thus, IEX believes this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

IEX also believes it is consistent with the Act to adjust the price of Post Only orders as needed to post to the Order Book in compliance with Rule 610(d) of Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Member entering the Post Only order. Post Only orders are thus designed to allow Members to achieve fee determinism, while also providing displayed liquidity to the market and thereby contribute to public price discovery in a manner that is consistent with the Act.

IEX also believes that the proposal to give Members the option of having Post Only orders be subject to display price sliding or cancel promotes price discovery and provision of greater liquidity by facilitating the display of an order at its chosen limit price. Because this flexibility will further encourage Members to submit Post Only orders to IEX, which will in turn increase the displayed liquidity on the Exchange, IEX believes that this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Additionally, IEX believes that its proposed approach to inclusion of the Trade Now instruction (as described in the Purpose section) is consistent with the purposes of the Act because it is designed to avoid internally locking the IEX Order Book by facilitating the execution of orders that would otherwise post, or remain posted, to the IEX Order Book at prices that would otherwise lock. Additionally, the Trade Now instruction would result in more executions of otherwise marketable orders, which benefits both parties to the transaction as well as the market as a whole by providing relevant price discovery. Thus, IEX believes this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In addition, as noted in the Purpose section, every aspect of IEX's proposal is already available on at least one other equities exchange, with the exception that IEX will not allow a non-displayed, reserve, or displayed odd lot order to be a Post Only order.[33] As discussed in the Purpose section, that functionality is identical to functionality that was offered by the New York Stock Exchange until 2022. IEX notes that these minor differences are limited to the orders for which the functionality is available rather than the manner in which is applied. Because these minor differences from other exchanges' functionality are not based on competitive considerations but rather simply to provide for reasonably predictable outcomes in a manner consistent with IEX's system design, IEX believes that this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

And IEX believes that the proposed conforming changes further the purposes of the Act

---

[33] See supra notes 20, 22.

because they provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion by market participants.

Finally, 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 order types offered by other national securities exchanges, which supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness with other markets by further incentivizing the posting of displayed liquidity on the Exchange. As noted above, the Exchange believes the proposed rule changes would generally align order handling on IEX with trading functionality on other equity exchanges and thus would promote competition among exchanges by offering member organizations similar functionality and order handling options available on other exchanges. The Exchange also believes that, to the extent the proposed changes would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhance market quality for all market participants. Moreover, competing exchanges have and can continue to adopt the same functionality contained in this proposal, subject to the SEC rule change process, as discussed in the Purpose and section.

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 Members would be eligible to submit Post Only orders and to include Trade Now instructions on eligible pegged orders in the same manner. Moreover, the proposal would provide potential benefits to all Members, as discussed in the Statutory Basis section, to the extent that allowing Post Only orders incentivizes the provision of more displayed liquidity on IEX.

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)[34] of the Act and Rule 19b-4(f)(6)[35] 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. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.[36]

The Exchange believes that the proposed rule change meets the criteria of subparagraph

---

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b-4(f)(6).

[36] 17 CFR 240.19b-4(f)(6)(iii).

(f)(6) of Rule 19b-4[37] because it would not significantly affect the protection of investors or the public interest. Rather, the proposed rule change neither significantly affects the protection of investors or the public interest, nor does it impose any burden on competition because it would merely combine the attributes of functionality currently offered by many other equities exchanges, as discussed in the Purpose section, and does not raise any new or novel material issues that have not already been considered by the Commission. Accordingly, IEX has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[38] and paragraph (f)(6) of Rule 19b-4 thereunder.[39]

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)[40] 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:

---

[37] 17 CFR 240.19b-4(f)(6).

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b-4(f)(6).

[40] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2023-13 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-2023-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2023-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Sherry R. Haywood,

Assistant Secretary.

41 17 CFR 200.30-3(a)(12).