

for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Article 20, Rule 2 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and 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 not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. Furthermore, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

At any time within 60 days of the filing of such 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>14</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-NYSECHX-2019-09 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-NYSECHX-2019-09. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSECHX-2019-09 and should be submitted on or before October 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87019; File No. SR-IEX-2019-10]

### **Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Corporate Discretionary Peg Order Type and Make Two Minor Non-Substantive Clarifying Changes to the Definition of a Discretionary Peg Order**

September 19, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 2019, 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 and II below, which Items have been prepared

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> IEX is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to add an additional Discretionary Peg order type (a “Corporate Discretionary Peg” or “C-Peg” order) that pegs to the less aggressive of (*i.e.*, the lower of) the Midpoint Price,<sup>7</sup> the consolidated last sale price, or the order’s limit price, if any. The Exchange is also proposing to make two non-substantive, clarifying changes to the definition of a Discretionary Peg order. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>8</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190 to add a new type of Discretionary Peg order type, a C-Peg order. As set forth in proposed Rule 11.190(b)(16), a C-Peg order is a non-displayed, pegged, buy order that upon entry into the System,<sup>10</sup> the price of the order is automatically adjusted to be equal to the less aggressive of (*i.e.*, the lower of) the Midpoint Price, the consolidated last sale price, or the order’s limit price, if any. Furthermore, when unexecuted shares of a C-Peg order are posted to the Order Book,<sup>11</sup> consistent with the discretionary functionality of the order type, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of one minimum price variant (“MPV”)<sup>12</sup> less than the NBB,<sup>13</sup> the consolidated last sale price, or the order’s limit price, if any (the order’s “resting price”).

In order to meet the limit price of active orders on the Order Book, a C-Peg order will exercise the least amount of price discretion necessary from the C-Peg order’s resting price to its discretionary price (*i.e.*, the less aggressive of the Midpoint Price, consolidated last sale price, or the C-Peg order’s limit price, if any), except during periods of quote instability as defined in Rule 11.190(g), when a C-Peg order is only eligible to trade at its resting price, as discussed further below. When exercising price discretion, a C-Peg order maintains time priority at its resting price and is prioritized behind any non-displayed interest at the discretionary price for the duration of that book processing action. If multiple C-Peg orders are exercising price discretion during the same book processing action, they maintain their relative time priority at the discretionary price. In the event the NBB becomes locked or crossed, C-Peg orders resting on or posting to the Order Book are priced one (1) MPV less aggressive than the locking or crossing price.<sup>14</sup>

Pursuant to Rule 11.190(g), the Exchange utilizes real time relative quoting activity of certain Protected Quotations<sup>15</sup> and a proprietary mathematical calculation (the “quote instability calculation”) to assess the probability of an imminent change to the current Protected NBB to a lower price (“quote instability factor”).<sup>16</sup> When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange’s defined quote instability threshold, the System treats the quote as unstable and the crumbling quote indicator (“CQI”) is on at that price level for two milliseconds, or until the CQI triggers again. During all other times, the quote is considered stable, and the CQI is off. The System independently assesses the stability of the Protected NBB and Protected NBO for each security.

As proposed, when the CQI is on, resting C-Peg orders will not exercise price discretion to meet the limit price of an active (*i.e.*, taking) order. However, C-Peg orders are eligible for execution at their resting price when the CQI is on, if at or below the consolidated last sale price and the order’s limit price (if any). Therefore, when IEX determines the quote to be unstable, C-Peg orders are protected from trading more aggressively at a price that appears to be unstable, and thus imminently stale, between the order’s resting price and the Midpoint Price.

Further, C-Peg orders will not be executable until at least one consolidated last sale trade in the security has occurred on the current day.<sup>17</sup>

Otherwise, C-Peg orders would operate in the same manner as Discretionary Peg (“D-Peg”) orders. Specifically, both C-Peg and D-Peg orders:

- May have any TIF described in Rule 11.190(c) and as described in Rule 11.190(a)(3).
- Are not eligible for routing pursuant to Rule 11.230(b) and (c)(2).
- May not be ISOs, as defined in Rule 11.190(b)(12).
- May be submitted with a limit price or without a limit price.

<sup>15</sup> Pursuant to Rule 11.190(g), only the Protected Quotations of the New York Stock Exchange, Nasdaq Stock Market, NYSE Arca, Nasdaq BX, Choe BZX Exchange, Choe BYX Exchange, Choe EDGX Exchange, and Choe EDGA Exchange are considered in the calculation.

<sup>16</sup> Rule 11.190(g) also applies to quote instability involving sell orders, but because C-Peg orders are always buy orders, this rule filing only addresses the applicability of Rule 11.190(g) to buy orders.

<sup>17</sup> See *infra* discussion on Members’ compliance obligations with respect to the safe harbor of Rule 10b-18 of the Exchange Act. 17 CFR 240.10b-18.

<sup>10</sup> See Rule 1.160(nn).

<sup>11</sup> See Rule 1.160(p).

<sup>12</sup> See Rule 11.210.

<sup>13</sup> The term “NBB” means the national best bid, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

<sup>14</sup> See Rule 11.190(h)(3)(C)(ii) and (D)(ii) regarding how Discretionary Peg orders behave in locked and crossed markets.

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> See Rule 1.160(t).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4.

- Are eligible to trade during the Regular Market Session. If a C-Peg or D-Peg order is submitted pre-market with a TIF of DAY, the order will be queued by the System until the start of the Regular Market Session (and in the case of a C-Peg, until after at least one last sale eligible trade in the security has occurred).

- May be a MQTY, as defined in Rule 11.190(b)(11).

- Are always non-displayed.
- May be an odd lot, round lot, or mixed lot.

- Are eligible to be invited by the System to Recheck the Order Book to trade against interest resting at the Midpoint Price as described in Rule 11.230(a)(4)(D).

The Exchange believes that a C-Peg order can assist Members handling an issuer's (and/or its affiliated purchasers') repurchases (or "buybacks") of an issuer's common stock in managing compliance with certain aspects of the "safe harbor" under Rule 10b-18 of the Act ("Rule 10b-18").<sup>18</sup> Rule 10b-18 provides an issuer (and its affiliated purchasers) with a "safe harbor" from liability for manipulation under Sections 9(a)(2) of the Act<sup>19</sup> and Rule 10b-5 under the Act<sup>20</sup> in connection with the issuer's buyback of its common stock in the market. For the safe harbor to apply, buybacks by or on behalf of the issuer must comply with four specific provisions with respect to the manner, time, price, and volume of the repurchases, and not be made as "part of a plan or scheme to evade the federal securities laws."<sup>21</sup>

Although the Rule 10b-18 safe harbor conditions apply directly to issuers (and their affiliated purchasers), issuers retain broker-dealers to conduct

<sup>18</sup> See 17 CFR 240.10b-18. Use of a C-Peg order is merely a tool to assist Members (and issuers and their affiliated purchasers) with compliance with specified aspects of the Rule 10b-18 safe harbor. Use of a C-Peg order would not guarantee that such order meets all of the requirements of the safe harbor conditions, and Members submitting C-Peg orders on behalf of issuers and their affiliated purchasers remain fully responsible for all aspects of compliance with the Rule 10b-18 safe harbor. In addition, issuers and their affiliated purchasers, if relying on the safe harbor for buybacks, remain fully responsible for all aspects of their compliance with the safe harbor conditions. IEX also notes that this rule change proposal is unrelated to a petition for rulemaking that IEX submitted in 2018 seeking a modification of the pricing safe harbor condition to include executions priced at the midpoint of the NBBO. See Petition for Rulemaking from John Ramsay on behalf of IEX (March 27, 2018) (Petition Number 4-722).

<sup>19</sup> 15 U.S.C. 78i(a)(2).

<sup>20</sup> 17 CFR 240.10b-5.

<sup>21</sup> See Securities Exchange Act Release No. 48766 (November 10, 2003), 68 FR 64952, 64954 (November 17, 2003) ("Adopting Release").

buybacks on their behalf subject to the relevant conditions of Rule 10b-18. A C-Peg order may assist IEX's broker-dealer Members conducting buybacks on behalf of an issuer (or their affiliated purchasers) with their efforts to comply with two aspects of the price and timing conditions of the Rule 10b-18 safe harbor for securities traded on IEX as described below.<sup>22</sup>

First, a C-Peg order may assist Members' compliance with the price condition because a C-Peg order will not trade above the last transaction price reported in the consolidated system (*i.e.*, the "consolidated last sale price"<sup>23</sup>). The Member handling the order must separately manage compliance with whether the transaction meets the independence test since Exchange functionality will not validate whether the consolidated last sale price was an "independent" transaction with respect to the issuer.<sup>24</sup> A C-Peg order will also not peg to the highest independent bid, even if higher than the consolidated last sale price, notwithstanding that the price test of the Rule 10b-18 safe harbor would permit a trade at such a price. Second, a C-Peg order may assist Members' compliance with the first aspect of the timing condition of the Rule 10b-18 safe harbor because a C-Peg order will not execute until after the first trade in the

<sup>22</sup> The price condition provides that the Rule 10b-18 purchases must be effected at a purchase price that "[d]oes not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system at the time the Rule 10b-18 purchase is effected." The timing conditions provide that any stock repurchases not be the "opening (regular way) purchase reported in the consolidated system," not be made within 10 or 30 minutes of the market close (depending upon the volume or public float value of the stock), and only trade after market close if they meet certain criteria. 17 CFR 240.10b-18(b)(3)(i) and (b)(2).

<sup>23</sup> The consolidated last sale price is only based on round or mixed lot transactions reported to the applicable securities information processor (*i.e.*, the Consolidated Trade Association or Unlisted Trading Privileges Plans) which is consistent with the term as used in the price safe harbor condition. Since 2013, odd-lot transactions have been reported to the consolidated tape, but are not included in calculations of last sale prices. See Securities Exchange Act. Rel. No. 70793 (Oct. 31, 2013), 78 FR 66788 (November 6, 2013) (S7-24-89) and Securities Exchange Act. Rel. No. 70794 (Oct. 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05).

<sup>24</sup> IEX notes the Adopting Release includes discussion that the term "independent" would only include a transaction not effected by or on behalf of the issuer (or any of its affiliated purchasers). For example, the Adopting Release states that the "price condition is intended to prevent the issuer from leading the market for the security through its repurchases by limiting the issuer to bidding for or buying its security at a price that is no higher than the highest independent published bid or last independent transaction price." Adopting Release, 68 FR at 64854.

stock is reported to the consolidated tape that day.

Further, use of a C-Peg order will not guarantee that Members meet all requirements of the Rule 10b-18 safe harbor, specifically that the issuer: (i) Use only one broker-dealer on any single day; (ii) not conduct repurchases at certain times prior to the close of a trading day; and (iii) not exceed certain purchase volume requirements. Additionally, issuers and their affiliated purchasers, if relying on the safe harbor for buybacks, remain fully responsible for their compliance with all of the safe harbor conditions.

Based on informal discussions with several Members, IEX believes there is significant interest in a Discretionary Peg order type that will assist Members with their compliance with the pricing and one of the timing conditions of Rule 10b-18, while providing the benefits of a Discretionary Peg order, namely the opportunity to execute issuer buybacks at the Midpoint Price (if at or lower than the last consolidated sale price) with protection from execution at a potentially stale price.

The Exchange notes that this proposed rule change is based on IEX's current D-Peg order type and has new features that are substantially similar to New York Stock Exchange ("NYSE") Rules 7.31(i)(4) (Last Sale Peg Modifier) and 13(f)(4)(B) (Buy Minus Zero Plus) with several minor differences.<sup>25</sup> Specifically, the NYSE Last Sale Peg Modifier order pegs to the lower of the last consolidated sale price, the limit price of the order, or the Protected Best Offer,<sup>26</sup> as opposed to a C-Peg which pegs to the lower of the Midpoint Price, the consolidated last sale price, or the order's limit price, if any. Also, a Last Sale Peg Modifier order will be rejected if there is no last consolidated sale price (*i.e.*, the stock has not yet traded that day),<sup>27</sup> but a C-Peg will wait to execute until there is an initial transaction in the stock and then will be marketable.

Comparing the NYSE Buy Minus Zero Plus order to the C-Peg, a Buy Minus Zero Plus order can only be a limit order that trades at a price equal to or lower than the last consolidated sale price of the stock, as opposed to a C-Peg order which can be submitted with or without a limit price, and the C-Peg's resting price will shift as the spread shifts.

The C-Peg order type is also distinct from the NYSE Last Sale Peg and Buy

<sup>25</sup> See Securities Exchange Act Release No. 85649 (April 15, 2019), 84 FR 16549 (April 19, 2019) (SR-NYSE-2019-16) and Securities Exchange Act Release No. 78679 (August 25, 2016), 81 FR 60080 (August 31, 2016) (SR-NYSE-2016-59).

<sup>26</sup> See NYSE Rule 7.31(i)(4).

<sup>27</sup> *Id.*

Minus Plus order types because it is a type of Discretionary Peg order, which means that it will exercise the minimum amount of price discretion between its resting price and discretionary price when seeking to execute at or near the Midpoint Price, except during periods of quote instability.

#### Housekeeping Changes to Rule 11.190(b)(10)

The Exchange is also proposing to make two non-substantive, clarifying changes to the definition of a Discretionary Peg order.<sup>28</sup> Specifically, the Exchange proposes to add text at the end of the clause about how a Discretionary Peg order behaves during periods of quote instability to explicitly state that the order is only eligible to trade at its resting price. While the Exchange believes that the existing text clearly provides by implication that during periods of quote instability a Discretionary Peg order is only eligible to trade at its resting price, the additional text will provide more fulsome clarity. The proposed new text is underlined below:

. . . In order to meet the limit price of active orders on the Order Book, a Discretionary Peg order will exercise the least amount of price discretion necessary from the Discretionary Peg order's resting price to its discretionary price (defined as the less aggressive of the Midpoint Price or the Discretionary Peg order's limit price, if any), except during periods of quote instability as defined in paragraph (g) below *when a Discretionary Peg order is only eligible to trade at its resting price.* . . .

The Exchange also proposes to delete the extraneous word "that" from Rule 11.190(b)(10)(F), as specified below with the deletion in brackets. The proposed deletion merely corrects a typographical error and has no impact on the meaning of the rule text.

Is eligible to trade only during the Regular Market Session. As provided in IEX Rule 11.190(a)(3)(D), any pegged order marked with a TIF of DAY that is submitted to the System before the opening of the Regular Market Session will be queued by the System until the start of the Regular Market Session; any pegged order [that] which is marked with a TIF other than DAY will be rejected when submitted to the System during the Pre-Market Session. Any pegged order submitted into the System after the closing of the Regular Market Session will be rejected.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>29</sup> in general, and furthers the objectives of Section

6(b)(5),<sup>30</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, 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 increase competition among execution venues for issuer buyback order flow, with the benefits of a Discretionary Peg order, as described in the Purpose section. While issuer buyback orders are conducted on IEX today, the Exchange believes that providing an order type that may assist Members' compliance with aspects of the Rule 10b-18 safe harbor will provide additional incentives for Members (as well as issuers and their affiliated purchasers) to conduct buybacks on IEX.

Further, IEX believes that the proposal is consistent with the protection of investors and the public interest in that the C-Peg order type may assist Members in their compliance with Rule 10b-18's safe harbor conditions when conducting issuer buybacks. By increasing the likelihood that an issuer's stock buybacks will execute at or near the Midpoint Price and decreasing the likelihood that the order will be executed at a stale price, IEX believes that the C-Peg order type may assist Members and the issuers (and affiliated purchasers) for whom they trade with their compliance with the federal securities laws while also helping foster enhanced execution quality for an issuer conducting a stock buyback.

In addition, as noted in the Purpose section, a C-Peg order will function very similarly to a Discretionary Peg buy order, except that a C-Peg order will not execute at a price higher than the consolidated last sale price for the security. Further, the proposed C-Peg order type contains new functionality that is substantially similar to existing NYSE order types, as described in the Purpose section.<sup>31</sup> 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

order types offered by the IEX and other national securities exchanges.<sup>32</sup>

Also, the Exchange believes that providing for potential execution of issuer buybacks at or near the Midpoint Price may facilitate Members' compliance with their best execution obligations when acting as an agent on behalf of an issuer.<sup>33</sup> Specifically, as noted in FINRA Regulatory Notice 15-46 (Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets), when conducting its review of execution quality in any security, a firm should consider, among other things, whether it could obtain midpoint price improvement on one venue versus less price improvement on another venue.<sup>34</sup>

Further, the Exchange does not believe that the proposed rule change raises any concerns regarding unfair competition. All Members would be eligible to use a C-Peg order type, regardless of whether the Member is conducting an issuer buyback. While not every Member conducts a business involving representation of issuer buyback orders, there is no restriction on any Member conducting such activity.

Finally, the Exchange believes that the proposed nonsubstantive clarifying changes to Rule 11.190(b)(10) are consistent with the protection of investors and the public interest because they will have no impact on the functionality of Discretionary Peg orders, but rather simply provide additional clarity on how Discretionary Peg orders operate.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that introducing the C-Peg order type would continue to enhance competition and execution quality for Members conducting an issuer buyback among execution venues, by providing an order type that may assist Members with their compliance with the pricing conditions and one of the timing conditions of Rule 10b-18.

<sup>28</sup> See, e.g., Securities Exchange Act Release No. 85351 (March 18, 2019), 84 FR 10871 (March 18, 2019) (SR-IEX-2018-23).

<sup>29</sup> All IEX Members that handle customer orders as agent are required to be FINRA members, and therefore are subject to FINRA guidance. See 17 CFR 240.15b9-1(a).

<sup>30</sup> See FINRA Regulatory Notice 15-46, endnote 25 available at: [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Notice\\_Regulatory\\_15-46.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> See *supra* note 21 [sic].

<sup>28</sup> Rule 11.190(b)(10).

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

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. Competing exchanges have and can continue to adopt similar order types, subject to the SEC rule change process, as discussed in the Purpose and Statutory Basis sections.<sup>35</sup> Moreover, there is no barrier to other national securities exchange adopting similar order types.

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 use a C-Peg order type, because the use of this particular order type will be available to any market participant, not just Members conducting issuer buybacks. While not every Member conducts a business involving representation of issuer buyback orders, there is no restriction on any Member conducting such activity.

Further, the proposed housekeeping changes to Rule 11.190(b)(10) are not designed to address any competitive issue, but rather to provide additional clarity on the operation of D-Peg orders.

### *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**

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<sup>36</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>37</sup>

The Exchange believes that the proposed rule change meets the criteria

of subparagraph (f)(6) of Rule 19b-4<sup>38</sup> because it may assist Members with their compliance with the safe harbor of Rule 10b-18 and is substantially similar to order types previously approved or considered by the Commission and as discussed in the Statutory Basis and Burden on Competition sections.<sup>39</sup> Specifically, the proposed C-Peg order will function very similarly to a Discretionary Peg buy order, except that a C-Peg order will not execute at a price higher than the consolidated last sale price for the security.<sup>40</sup> Further, the proposed C-Peg order type contains new functionality that is substantially similar to existing NYSE order types, as described in the Purpose section.<sup>41</sup> 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 order types offered by IEX and other national securities exchanges.

The Exchange will implement the proposed rule change within 90 days of filing, subject to the 30-day operative delay, and provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

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 will institute proceedings 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-2019-010 on the subject line.

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

<sup>39</sup> See *supra* notes 21, 28 [sic].

<sup>40</sup> See *supra* note 28 [sic].

<sup>41</sup> See *supra* note 21 [sic].

#### *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-2019-010. 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 (<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-2019-010 and should be submitted on or before October 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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

<sup>35</sup> See *supra* note 21 [sic].

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

<sup>37</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.