

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-030 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-CBOE-2021-030. 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-CBOE-2021-030 and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91754; File No. SR-IEX-2021-08]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Discretionary Limit Orders To Be Reserve Orders

May 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 23, 2021, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,³ and Rule 19b-4 thereunder,⁴ IEX is filing with the Commission a proposed rule change to allow Discretionary Limit orders to be reserve orders. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act⁵ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁶

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

II. Self-Regulatory Organization's Statement of the Purpose of, and 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 allow a Discretionary Limit⁷ ("D-Limit") order to be a reserve order.⁸ As proposed, a D-Limit reserve order will essentially function like any other reserve order, *i.e.*, on entry, it will be processed as a single order, and if not fully executed, the D-Limit reserve order will post to the Order Book⁹ and effectively be treated by the System¹⁰ as two discrete orders: The displayed portion of the order will be a displayed D-Limit order, and the reserve portion will be a non-displayed D-Limit order. However, consistent with existing D-Limit functionality, there are two differences between D-Limit reserve orders and other reserve orders: (1) Both the displayed and non-displayed portions of a D-Limit reserve order may be subject to an automatic price adjustment during periods of quote instability; (2) D-Limit reserve orders can only execute during the Regular Market Session.¹¹ IEX also proposes to make some conforming edits to the subparagraph headers in the D-Limit order definition to align the rule text with other order definitions.

Background

Since the approval of its exchange application, IEX, like other equities exchanges,¹² has offered Members¹³ a "reserve" order type, which allows

⁷ See IEX Rule 11.190(b)(7).

⁸ See IEX Rule 11.190(b)(2).

⁹ See IEX Rule 1.160(p).

¹⁰ See IEX Rule 1.160(nn).

¹¹ See IEX Rule 1.160(gg).

¹² See, e.g., Cboe BZX Exchange, Inc. Rule 11.9(c)(1); MEMX, LLC Rule 11.8(b)(4); The Nasdaq Stock Market LLC Rule 4703(h); and New York Stock Exchange LLC Rule 7.31(d)(1).

¹³ See IEX Rule 1.160(s).

⁵⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4.

Members to submit a partially displayed limit order,¹⁴ so that a portion of the order is displayed (“display quantity”) and a portion of the order is non-displayed (“reserve quantity”).¹⁵ As set forth in IEX Rule 11.190(b)(2), when Members submit a reserve order, they must specify the display quantity (which must be equal to or greater than one round lot). Upon entry, the System attempts to execute a reserve order as a single order of its full, unexecuted size. If an incoming reserve order is not fully executed, it posts to the Order Book where it is effectively treated as two discrete orders: the display quantity (“displayed portion”) and the reserve quantity (“non-displayed portion”). For the purposes of pricing reserve orders on the Order Book, displayed portions are treated as displayed orders and non-displayed portions are treated as non-displayed orders. As described in IEX Rule 11.190(h), it is possible for the non-displayed portion to rest at a different price than the displayed portion, because the displayed portion is subject to display-price sliding¹⁶ while the non-displayed portion is subject to the Midpoint Price Constraint.¹⁷ If the displayed portion of the reserve order is decremented such that less than one round lot would be displayed, the displayed portion of the reserve order shall be refreshed for either (i) the original displayed quantity, or (ii) the entire reserve quantity, if the total number of unexecuted shares in the order is smaller than the original Member instructed displayed quantity. Each time the displayed portion of the order is refreshed from the reserve quantity, that portion is prioritized behind other existing displayed orders; the priority of the non-displayed portion, however, is unchanged by the refresh process.

IEX recently introduced a new type of limit order, the D-Limit order,¹⁸ which is designed to protect liquidity providers from potential adverse selection by latency arbitrage trading strategies in a fair and nondiscriminatory manner.¹⁹ A D-Limit order may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book is priced to be equal to and ranked at the

order’s limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g).²⁰

Specifically, if the System receives a D-Limit buy (sell) order during a period of quote instability (*i.e.*, the Crumbling Quote Indicator or “CQI” is on), and the D-Limit order has a limit price equal to or higher (lower) than the quote instability determination price level (“CQI Price”), the price of the order will be automatically adjusted by the System to one (1) MPV²¹ lower (higher) than the CQI Price (the “effective limit price”). Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the Order Book, if a quote instability determination is made and such shares are ranked and displayed (in the case of a displayed order) by the System at a price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to the effective limit price. A D-Limit order with an effective limit price will not revert to the price at which it was previously ranked and displayed (in the case of a displayed order). Once the price of a D-Limit order that has been posted to the Order Book is automatically adjusted by the System, the order will continue to be ranked and displayed (in the case of a displayed order) at the effective limit price, unless subject to another automatic adjustment, or if the order is subject to the price sliding provisions of IEX Rule 11.190(h). Otherwise, a D-Limit order operates in the same manner as either a displayed or non-displayed limit order, as applicable.²²

D-Limit orders currently cannot be a reserve order.²³ However, IEX has received informal feedback from Members indicating that they prefer to use reserve orders to post displayed liquidity and would like to be able to use such functionality for D-Limit orders. Based on this feedback, IEX proposes to enable D-Limit orders to be reserve orders, consistent with how IEX treats any other limit orders.²⁴

Proposal

IEX proposes to amend IEX Rules 11.190(b)(2), 11.190(b)(7), and Supplementary Material .01 to allow D-Limit orders to be submitted as a reserve order. D-Limit orders already may be submitted as either displayed or non-displayed orders, and this proposal will allow Members to submit both a

displayed and non-displayed D-Limit order as a single reserve order that allows the Member to control how much of the D-Limit order is displayed at any given time.

As proposed, a D-Limit reserve order will essentially function like any other reserve order, *i.e.*, on entry, it will be processed as a single order, and if not fully executed, the D-Limit reserve order will post to the Order Book and effectively be treated by the System as two discrete orders: The displayed portion of the order will be a displayed D-Limit order, and the reserve portion will be a non-displayed D-Limit order. However, consistent with existing D-Limit functionality, there are two differences between D-Limit reserve orders and other reserve orders, as described below.

First, D-Limit reserve orders, like all D-Limit orders, will only be eligible to trade during the Regular Market Session, and a D-Limit reserve order with a Time-in-Force of “DAY” submitted before the opening of the Regular Market Session will be queued by the System until the start of the Regular Market Session.²⁵ Any D-Limit reserve orders submitted after the closing of the Regular Market Session will be rejected.²⁶ This functionality differs from other reserve orders, which may be submitted during the Pre-Market Session,²⁷ the Post Market Session,²⁸ or the Regular Market Session.²⁹

Second, D-Limit reserve orders, as described above, may also be subject to an effective limit price if their price is adjusted by the System during a period of quote instability. Therefore, a D-Limit reserve order resting on the Order Book will function like any other reserve order except that it can never be priced above either its limit price or its effective limit price.

Finally, IEX proposes to make conforming changes to IEX Rule 11.190(b)(7) to conform the subparagraph numbering with other order types described in IEX Rule 11.190(a) and (b).

The following is a list of the specific proposed changes to IEX Rule 11.190:

- Modify IEX Rule 11.190(b)(2)(A), which currently says reserve orders must be limit orders to add the clarifying words “including a Discretionary Limit order.”
- Modify IEX Rule 11.190(b)(2)(F), which describes how reserve orders may be submitted during the Pre-Market, Regular Market, and Post-Market sessions, to add the words “with the exception of Discretionary

¹⁴ See IEX Rule 11.190(a)(1).

¹⁵ See IEX Rule 11.190(b)(2).

¹⁶ See IEX Rule 11.190(h)(1).

¹⁷ See IEX Rule 11.190(h)(2).

¹⁸ See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15) (“D-Limit Approval Order”).

¹⁹ See Securities Exchange Act Release No. 87814 (December 20, 2019), 84 FR 71997, 71998 (December 30, 2019) (SR-IEX-2019-15) (“D-Limit Proposal”).

²⁰ See IEX Rules 11.190(b)(7) and 11.190(g).

²¹ See IEX Rule 11.210.

²² See IEX Rule 11.190(b)(7).

²³ See IEX Rule 11.190(b)(7)(e)(H).

²⁴ See IEX Rule 11.190(b)(2)(A).

²⁵ See IEX Rule 11.190(b)(7)(E)(e)

²⁶ See *Id.*

²⁷ See IEX Rule 1.160(z).

²⁸ See IEX Rule 1.160(aa).

²⁹ See IEX Rule 11.190(b)(2)(F).

Limit reserve orders, which may only be submitted as set forth in IEX Rule 11.190(b)(7)(E)(v).”

- Modify the main paragraph of IEX Rule 11.190(b)(7) to specify that D-Limit orders may also be “partially displayed” (*i.e.*, reserve orders).

- Remove IEX Rule 11.190(b)(7)(e)(H), which states that D-Limit orders may not be reserve orders.

- Re-letter and re-number the subparagraphs of the D-Limit order definition to conform to the other order types in the rule. Specifically:

- Re-letter IEX Rule 11.190(b)(7) subparagraphs (a)–(e) to now be subparagraphs (A)–(E)

- Re-number the subparagraphs under IEX Rule 11.190(b)(7)(E) ³⁰ from (A)–(J) to (i)–(ix).

- Modify IEX Rule 11.190(b)(7)(C)–(E) ³¹ so that the three parentheticals that say “in the case of a displayed order” include the words “or the displayed portion of a reserve order.”

- Modify IEX Rule 11.190(b)(7)(E)(viii) ³² to specify that the displayed portions of D-Limit reserve orders, like displayed D-Limit orders, are not eligible to be invited by the System to Recheck as described in IEX Rule 11.230(a)(4)(D).

- Modify Supplementary Material .01 to IEX Rule 11.190(b) (“Reserve Orders”) to add the following language to the end of the first paragraph:

- “D-Limit reserve orders function like any other reserve order, except they can only trade during the Regular Market Session, and if a D-Limit reserve order has been subject to an automatic price adjustment pursuant to paragraphs (b)(7)(C) and (D) of this IEX Rule, both the displayed and non-displayed portions of the D-Limit reserve order will continue to be ranked and displayed (in the case of the displayed portion) at the adjusted price. The adjusted price functions as an effective limit price for both the displayed and non-displayed portions of the D-Limit reserve order if one or both portions of the D-Limit reserve order are subsequently price adjusted pursuant to the Price Sliding provisions of paragraph (h) of this IEX Rule.”

Implementation

This proposed rule change will be immediately effective upon filing. The Exchange will provide at least ten (10) days’ notice to Members and market participants of the implementation timeline.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³³ in general, and furthers the objectives of Section 6(b)(5),³⁴ 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 and opportunities for Members to add both displayed and non-displayed liquidity to the Exchange. As noted in the Purpose section, the proposed rule change is responsive to informal feedback from Members indicating that they prefer to use reserve orders to post displayed liquidity and would like to be able to use such functionality for D-Limit orders. Thus, IEX believes that the proposed rule change will attract additional liquidity to the Exchange and, to the extent it is successful in doing so, will benefit all market participants, thereby supporting 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. The Exchange also believes that enabling the entry of D-Limit orders that can be partially displayed, will enhance opportunities for price discovery and increase the overall displayed (and non-displayed) liquidity profile on the Exchange, to the benefit of all market participants.

Moreover, the proposed rule change will merely combine the attributes of two existing order types—D-Limit orders and reserve orders—to expand the functionality available to Members. Consequently, the Exchange does not believe that the proposed rule change raises any novel issues not already considered by the Commission.

Furthermore, IEX believes it is consistent with the purposes of the Act for D-Limit reserve orders to function like other reserve orders except for when they can be submitted and how they behave if their price was adjusted during a period of quote instability, because these two differences are essential aspects of D-Limit orders. Similarly, IEX believes that updating the reserve order description in the Supplementary Material to IEX Rule 11.190(b) is consistent with the protection of investors and the public interest by providing clarity to all market participants about how D-Limit reserve orders function, including the two ways in which their functionality differs from that of other reserve orders.

Thus, these proposed changes support 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, a D-Limit reserve order is a combination of two order types the Commission has already approved—reserve orders ³⁵—which are a common order type on equity exchanges ³⁶—and D-Limit orders.³⁷ 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.

Finally, the Exchange believes that the proposed non-substantive conforming changes to IEX Rule 11.190(b)(7) are consistent with the protection of investors and the public interest because they will have no impact on the functionality of D-Limit orders, but rather simply provide consistency and clarity in IEX’s “Orders and Modifiers” rule, thereby reducing the potential for confusion of any market participants.

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 enhancing IEX’s reserve order and D-Limit order types. As discussed in the Purpose section, the proposal is designed to incentivize the entry of additional liquidity providing orders on IEX by offering Members the flexibility of using a reserve order to control what portion of their D-Limit orders are displayed at any time. Further, by enabling the entry of D-Limit orders that can be partially displayed, IEX believes this proposal will enhance opportunities for price discovery and increase the overall displayed (and non-displayed) liquidity profile on the

³⁵ See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222) (approving IEX’s exchange application, which included the reserve order type).

³⁶ See *supra* note 12.

³⁷ See *supra* note 18.

³⁰ Currently IEX Rule 11.190(b)(7)(e).

³¹ Currently IEX Rule 11.190(b)(7)(c)–(e).

³² Currently IEX Rule 11.190(b)(7)(e)(I).

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(5).

Exchange, to the benefit of all market participants.

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 D-Limit reserve order, and all Members would be eligible to execute against any portion of a D-Limit reserve order. Moreover, the proposal would provide potential benefits to all Members to the extent that there is more liquidity available on IEX as a result of increased use of D-Limit orders attributable to the ability to enter such orders as reserve orders.

Further, the proposed conforming edits to IEX Rule 11.190(b)(7) are not designed to address any competitive issue, but rather to provide additional clarity in IEX's rulebook.

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)³⁸ of the Act and Rule 19b-4(f)(6)³⁹ 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-4⁴⁰ 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 two existing order types—D-Limit orders and reserve orders—to expand the functionality available to Members, 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 in connection with existing order types offered by IEX. Accordingly, IEX has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act⁴¹ and paragraph (f)(6) of Rule 19b-4 thereunder.⁴²

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)⁴³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2021-08 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-2021-08. 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 offices 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-2021-08, and should be submitted on or before June 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91756; File No. SR-GEMX-2021-03]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

May 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 21, 2021, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee schedule to establish fees for Industry Members related to the National Market

³⁸ 15 U.S.C. 78s(b)(3)(A).

³⁹ 17 CFR 240.19b-4(f)(6).

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ 15 U.S.C. 78s(b)(3)(A).

⁴² 17 CFR 240.19b-4(f)(6).

⁴³ 15 U.S.C. 78s(b)(2)(B).

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.