Framework describes the process by which the Clearing Agencies identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. The quantitative models covered by the Framework are utilized by the Clearing Agencies, as applicable, to manage risks associated with the safeguarding of securities and funds that are in their custody or control or for which they are responsible, and the proposed rule change clarifies the applicability of the Framework to specific models, thereby better supporting the ability of the Clearing Agencies to perform these important risk management functions and comply with other regulatory requirements, including Rule 19b–4.

Rule 17Ad–22(e)(4), (e)(6), and (e)(7) [29] requires, *inter alia,* that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage risks associated with its credit risk management models, margin models, and liquidity risk management models, as applicable. As discussed above, the proposed rule change clarifies the applicability of the Framework to such types of models, thereby better supporting the ability of the Clearing Agencies to comply with these requirements. Therefore, the Clearing Agencies believe that the proposed changes to the Framework are consistent with Rule 17Ad–22(e)(4), (e)(6), and (e)(7).[30]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed rule change would have any impact, or impose any burden, on competition because the proposed rule change simply clarifies the scope and administration of the Framework by the Clearing Agencies and would not effectuate any changes to the Clearing Agencies' model risk management tools as they currently apply to their respective Members or Participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not solicited or received any written comments relating to this proposal. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [31] of the Act and paragraph (f) [32] of Rule 19b–4 thereunder. 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.

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–NSCC–2021–008 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSCC–2021–008. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2021–008 and should be submitted on or before August 9, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15189 Filed 7–16–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92398; File No. SR–IEX–2021–06]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Revise the Definitions of Retail Orders and Retail Liquidity Provider Orders and Disseminate a Retail Liquidity Identifier Under the IEX Retail Price Improvement Program

July 13, 2021.

I. Introduction

On April 1, 2021, the Investors Exchange LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to enhance its Retail Price Improvement Program for the benefit of retail investors. The proposed rule change was published for comment in the **Federal Register** on April 15, 2021.[3] On May 26, 2021, pursuant to Section 19(b)(2) of the Act,[4]

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[29] 17 CFR 240.17Ad–22(e)(4), (e)(6) and (e)(7). References to Rule 17Ad–22(e)(6) and compliance therewith apply to the CCPs only and do not apply to DTC.

[30] *Id.*

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f).

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91523 (April 9, 2021), 86 FR 19912 (April 15, 2021) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

The Commission received two comment letters regarding the proposed rule change, and one response to comments from the Exchange.[6] On July 2, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and issuing this order approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes several changes to its Retail Price Improvement Program (the ''Program'').[8] Under the Program, IEX members that qualify as Retail Member Organizations (''RMOs'') are eligible to submit certain agency or riskless principal orders that reflect the trading interest of a natural person with a ''Retail order'' modifier. Retail orders are only eligible to execute at the midpoint price of the national best bid and national best offer (''Midpoint Price'') or better. Any IEX member is able to provide price improvement to Retail orders by submitting contra-side orders priced to execute at the Midpoint Price or better, including Retail Liquidity Provider (''RLP'') orders that are only eligible to execute against a Retail order at the Midpoint Price.

Retail Order Definition

First, the Exchange proposes to revise the definition of ''Retail order'' in IEX Rule 11.190(b)(15) such that Retail orders may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s) (the ''390-Order Limit'').[9] Currently, ''Retail orders'' under the Exchange's Program must reflect the trading interest of a natural person and meet other requirements, but they are not classified based on a per-day order threshold. The Exchange's proposal also specifies the counting methodology [10] and supervisory requirements [11] to determine whether a retail customer has reached the 390-Order Limit.

Retail Liquidity Identifier

Next, the Exchange proposes to disseminate a ''Retail Liquidity Identifier'' to inform RMOs of the presence of RLP trading interest on the Exchange in order to incentivize RMOs to send Retail orders to the Exchange.[12] Specifically, the Exchange proposes new IEX Rule 11.232(f) to disseminate a Retail Liquidity Identifier through the Exchange's proprietary market data feeds and the appropriate securities information processor (''SIP'') when resting available RLP order interest aggregates to form at least one round lot for a particular security,[13] provided that the RLP order interest is resting at the Midpoint Price [14] and is priced at least $0.001 better [15] than the national best bid or national best offer. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RLP order interest, but will not include the price or size.[16]

RLP Order Definition

In conjunction with the proposed Retail Liquidity Identifier, the Exchange proposes to revise the definition of ''RLP order'' in IEX Rule 11.190(b)(14) so that such orders can only be midpoint peg orders (as defined in IEX Rule 11.190(b)(9)) and cannot include a minimum quantity restriction. Currently, an RLP order is a discretionary peg order (as defined in IEX Rule 11.190(b)(10)). The Exchange believes that continuing to have RLP orders be discretionary peg orders would unnecessarily complicate the Retail Liquidity Identifier because, under the Exchange's rules, discretionary peg orders do not explicitly post to the Exchange's order book (''Order Book'') at the Midpoint Price.[17] The Exchange further notes that permitting an RLP order to include a minimum quantity restriction would reduce the determinism of the order's availability to trade at the Midpoint Price; the Exchange believes that prohibiting quantity restrictions will increase execution rates for Retail orders.[18]

RLP Order Priority

As originally proposed, the revised RLP orders would have been given Order Book priority over non-displayed orders priced to execute at the Midpoint Price.[19] However, in Amendment No. 1, the Exchange revised its proposal so that the Exchange's regular priority rules (*i.e.,* price/time) would apply equally to RLP orders and non-RLP orders at the midpoint, thus eliminating the originally proposed Order Book priority for RLP orders. Accordingly, under the revised proposal set forth in Amendment No. 1, RLP orders resting at the Midpoint Price will be ranked against resting non-displayed orders priced to execute at the Midpoint Price

[5] *See* Securities Exchange Act Release No. 92029 (May 26, 2021), 86 FR 29608 (June 2, 2021).

[6] Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-iex-2021-06/sriex202106.htm.*

[7] In Amendment No. 1, the Exchange proposes to modify the proposal to rank RLP orders (as defined below) in time priority with non-displayed orders priced to execute at the Midpoint Price (as defined below), rather than ahead of such orders as originally proposed. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-iex-2021-06/sriex202106-9041946-246227.pdf.*

[8] *See* Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR–IEX–2019–05) (order approving the IEX Retail Price Improvement Program).

[9] *See also* proposed IEX Rule 11.190(b)(15), Supplementary Material .01 (further defining ''Retail order'').

[10] Under the proposal, certain ''parent'' orders that are broken into multiple ''child'' orders will count as one order even if the ''child'' orders are routed across multiple exchanges; with certain exceptions, any order that cancels and replaces an existing order will count as a separate order. *See* proposed IEX Rule 11.190(b)(15), Supplementary Material .01.

[11] Under the proposal, RMOs (as defined in IEX Rule 11.232) would be required to have reasonable policies and procedures in place to ensure that Retail orders are appropriately represented on the Exchange. Such policies and procedures would need to provide for a review of retail customers' activity on at least a quarterly basis. Orders from any retail customer that exceeded an average of 390 equity orders per day during any month of a calendar quarter may not be entered as ''Retail orders'' for the next calendar quarter. RMOs would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While RMOs would only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a retail customer for which orders are being represented as Retail orders but that has averaged more than 390 equity orders per day during a month, the Exchange will notify the RMO, and the RMO will be required to change the manner in which it is representing the retail customer's orders within five business days. *See* proposed IEX Rule 11.190(b)(15), Supplementary Material .02.

[12] *See* Notice, *supra* note 3, at 19914.

[13] The Exchange believes the one round lot requirement is appropriate in order to limit dissemination to when there is a material amount of RLP order interest available. *See id.* at 19915.

[14] The Exchange notes that an RLP order could have a limit price less aggressive than the Midpoint Price, in which case it would not be eligible to trade with an incoming Retail order. Such RLP orders would not be included in the Retail Liquidity Identifier dissemination. *See id.*

[15] The Exchange notes that, because the RLP orders will be resting at the Midpoint Price, IEX's Retail Liquidity Identifier will reflect at least $0.005 of price improvement for any orders priced at or above $1.00 per share, unless the national best bid or offer is locked or crossed. *See id.*

[16] The Exchange notes that, while an explicit price will not be disseminated, because RLP orders are only eligible to trade at the Midpoint Price, dissemination will thus reflect the availability of price improvement at the Midpoint Price. *See id.* at 19914–15.

[17] *See id.* at 19915.

[18] *See id.*

[19] *See id.* at 19914.

based on time priority since all such prices will be at the Midpoint Price.[20]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and with Section 6(b)(8) of the Act,[23] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Retail Order Definition

First, the Exchange proposes to amend the definition of Retail order by adopting the 390-Order Limit and setting forth criteria to determine when this limit is reached and how it is enforced. The Exchange notes that one other equities exchange, Cboe EDGX Exchange, Inc. (''EDGX''), uses the same 390 orders-per-day average in its retail liquidity program to delineate EDGX Retail Priority Orders, and applies a counting methodology and supervisory requirements that are substantially similar to those being proposed by IEX.[24] The Exchange believes that the 390-Order Limit is reasonable and not overly restrictive because it contemplates active trading, while not reaching a level to indicate one is a professional trader.[25] The Exchange further believes that limiting the types of investors on whose behalf Retail orders can be submitted to those who are less likely to be professional market participants, will expand the pool of market participants willing to provide contra-side liquidity because of the Retail orders' non-professional characteristics, thereby increasing price improvement opportunities for Retail orders at midpoint prices.[26]

The Commission received two letters from one commenter, both of which focus on the 390-Order Limit,[27] and the Exchange submitted a single response to both letters.[28] The commenter expresses concern with the 390-Order Limit based on his experience with the use of ''professional'' customer rules in the options market. Specifically, the commenter states that, in the present-day options market, there is low likelihood that customer origin code orders enjoy a meaningful priority advantage over market makers, and the 390-order threshold effectively limits competition between non-professional liquidity providers and market makers.[29] The commenter suggests that the ''professional'' customer designation in the options market has over time created a ''two-tiered'' market that benefits market makers and limits how many orders a ''secondary'' liquidity provider will be willing to display (before they trip the ''professional'' customer threshold), and thus detracts from the incentive for market makers to display their best price, which leads to wider bid/ask spreads for options.[30] In addition, the commenter believes that the ''professional'' customer designation in options limits the probability of customer-to-customer trades, especially when accounting for the likelihood of make vs. take orders posting on different exchanges because of differing fee and rebate incentives.[31] The commenter further states that applying a 390-order threshold to equities, as IEX proposes to do for its Program, would cater to preferred members by giving them a more attractive pool of order flow to trade against, and will provide a ''short lived'' benefit of better prices to retail customers.[32] The commenter is critical of payment for order flow and the small amount of price improvement it often provides to customers, and recommends that the quality of an execution should be based on all liquidity in the market (including hidden liquidity) and not just displayed liquidity that can be negatively impacted by competitive dynamics.[33] Further, the commenter is critical of the ambiguity inherent in the application of the 390-order threshold across broker-dealers in the options market, and believes similar interpretive questions could be present in the equities context.[34]

In its response letter, IEX states its belief that the commenter's concerns about options market practices ''cannot be reasonably extrapolated to the use of retail liquidity provider programs for equity exchanges, or to IEX's Retail Program in particular.'' [35] IEX points out that the commenter focuses on the impact of the 390-order threshold on options orders seeking to provide liquidity, but IEX explains that the 390-Order Limit only applies to Retail orders under the Program, which are never displayed and can only take resting liquidity.[36] Accordingly, Retail orders will never post to the Order Book, will never be flagged as Retail orders in any market data, and do not directly contribute to or impact IEX's bid/ask spread.[37] Thus, IEX argues that the commenter's concerns with the 390-Order Limit ''are not at issue in our proposal.'' [38]

Further in response to the commenter's concerns about how the 390-order threshold in options can harm non-professionals who limit their trading to avoid crossing the threshold, the Exchange argues that the market for retail order flow is already ''two-tiered'' in that the preponderance of retail orders are executed on non-exchange venues, and that this proposal seeks to enhance IEX's ability to compete for retail order flow while providing meaningful price improvement to retail customers.[39]

The Commission believes that the commenter raises concerns that merit further consideration about the application of a 390-order threshold for ''professional'' customer status in the options market, particularly as that market has continued to evolve since those designations were first introduced. In the options market,

[20] *See supra* note 7.

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] *See* Notice, *supra* note 3, at 19914.

[25] *See id.*

[26] *See id.*

[27] *See* letters to Vanessa Countryman, Secretary, Commission, from Mike Ianni, dated May 5, 2021 (''Ianni Letter 1'') and May 30, 2021 (''Ianni Letter 2'').

[28] *See* letter to Vanessa Countryman, Secretary, Commission, from Claudia Crowley, Chief Regulatory Officer, IEX, dated June 29, 2021 (''IEX Response'').

[29] *See* Ianni Letter 1, *supra* note 27, at 2–3; and Ianni Letter 2, *supra* note 27, at 2.

[30] *See* Ianni Letter 1, *supra* note 27, at 4; and Ianni Letter 2, *supra* note 27, at 4 and 7–8.

[31] *See* Ianni Letter 2, *supra* note 27, at 2.

[32] *See* Ianni Letter 1, *supra* note 27, at 3.

[33] *See id.*

[34] *See* Ianni Letter 2, *supra* note 27, at 6.

[35] *See* IEX Response, *supra* note 28, at 3.

[36] *See id.* at 4.

[37] *See id.* at 4–5.

[38] *See id.* at 4.

[39] *See id.* at 5–6. The Exchange also points to existing precedent for applying the 390-Order Limit to an equity exchange. *See id.* at 5 (citing Securities Exchange Act Release No. 87200 (October 2, 2019), 84 FR 53788 (October 8, 2019) (SR–CboeEDGX–2019–012)).

particularly those that offer to the ''customer'' origin code the highest priority (including over market makers) and often low or no fees, there can potentially be a meaningful difference between being classified as a ''customer'' or a ''professional'' customer, as the latter is typically subject to the same priority and fee levels as other broker-dealers, including those with the most sophisticated and costly trading resources. Thus, in the options market, crossing the 390-order threshold and being labeled as a ''professional'' customer can potentially matter to some frequent traders.

However, IEX is not proposing to use the 390-Order Limit to classify order origin codes into ''customer'' and ''professional'' customer for general trading purposes. IEX is not creating a new class of ''professional'' customer for the equities market. Rather, the 390-Order Limit will only be used to classify certain orders seeking to take liquidity in the exclusive context of IEX's Program. IEX's proposal provides a bright-line test that broker-dealers can use to ascertain whether orders they route to IEX under IEX's Program are individual retail investor orders or are orders from market participants that IEX believes trade with a frequency that is uncharacteristic of a typical individual retail investor trading for her personal investment account. Moreover, whether a retail investor exceeds the 390-Order Limit or not, IEX's proposal will not change the priority status or fees of any customer order outside of the Program. Instead, the new threshold only further restricts what types of incoming take orders can interact with a resting RLP order.[40]

While the commenter acknowledges the potential for price improvement for retail investors under IEX's proposal, the commenter believes that any such benefits will be ''short lived,'' and that this proposal opens up the possibilities for similar rules by other equity exchanges that could have negative consequences to liquidity in the equity market over the longer term, such as higher fees for ''professional'' customers.[41] The Commission does not believe that the proposal's benefits of providing midpoint prices (or better) to retail investors under the Program will be short-lived because midpoint prices can provide meaningful price improvement under different market conditions.[42] Further, because IEX's proposal is limited to classifying incoming retail orders that remove liquidity for the narrow purpose of its Program, it is not comparable to a broader ''professional'' customer rule as currently exists in the options market.

The commenter also points to what the commenter believes to be competitive harm that the options market versions of a 390-order threshold have caused. The commenter believes that some retail traders in the options market may stop trading as they approach the 390-order threshold, often after being warned by their retail broker that they are approaching the threshold, so as to avoid losing ''regular'' customer status should they exceed that limit.[43] The commenter also cautions that a desire to limit trading to stay under the 390-order threshold in the options market can limit the ability of traders to use small orders to seek out the best hidden prices[44] and can potentially result in wider options spreads if secondary liquidity providers do not compete to provide liquidity in order to limit their trading to stay under the threshold.[45] The Commission agrees with the Exchange that it is difficult to definitely ascribe, without more evidence, a causal link between the adoption of professional customer status in the options markets with wider spreads.[46] Nevertheless, the proposal's 390-Order Limit should not constrain the ability or willingness of liquidity providers to provide liquidity. First, any liquidity-providing market participant can submit RLP orders and exceeding 390 orders per day would have no effect on the participant's ability to do so. Second, RLP orders are non-displayed orders that yield priority to displayed orders, including displayable odd lot orders at executable prices, and thus should not directly impact IEX's bid/ask spreads.[47] While a program that segments retail order flow away from displayed exchange quotes could theoretically impact spreads if it impacts the willingness of liquidity providers to display tighter quotes, IEX correctly notes that much of the retail volume today executes away from exchanges, and thus, IEX's proposal is appropriately regarded as a way to compete to bring that flow back onto an exchange. Third, while the proposed threshold could impact liquidity takers (*i.e.,* retail traders that exceed the 390-Order Limit) because they would lose the ability to interact with resting RLP orders on IEX, liquidity takers' orders could still be submitted to IEX or other exchanges for potential midpoint executions (*e.g.,* against midpoint peg orders).

Finally, citing to his experience in the options market, the commenter believes that interpretation and enforcement of the 390-Order Limit could be difficult because, for example, he has observed ambiguity and inconsistency among broker-dealers in the options market with respect to how orders should be counted towards the 390 threshold.[48] IEX has represented that its regulatory program will be enhanced for this proposal.[49] The Commission believes that the proposed threshold is clear and applies to an investor that places ''more than 390 equity orders per day on average during a calendar month for its own beneficial account(s)''.[50] To the extent that market participants have interpretive questions, the Exchange should address them and, if necessary, amend its rule to provide additional clarity.

Accordingly, and based on the foregoing, the Commission finds that the proposed changes to the Exchange's definition of Retail order, including the proposed new 390-Order Limit, are consistent with the Act.

[40] While RLP orders will only execute with incoming Retail orders, an incoming Retail order can interact with any order (*i.e.,* not just RLP orders) priced to execute at the Midpoint Price or better.

[41] *See* Ianni Letter 1, *supra* note 27, at 3–4.

[42] With respect to the commenter's statement that the quality of a fill should be based on all liquidity available in the market (including hidden liquidity) (*see* Ianni Letter 1, *supra* note 27, at 3), the Commission recently adopted rules to require that certain displayable odd-lot orders be included in core consolidated market data and thus reflected in the best bid and ask prices. *See* Securities Exchange Act Release No. 90610 (December 9, 2020), 86 FR 18596 (April 9, 2021) (S7–03–20) at 18611–14.

[43] *See* Ianni Letter 2, *supra* note 27, at 4. In both letters, the commenter also provides analysis of problems within the options market structure as it applies to giving retail customers priority. *See, e.g.,* Ianni Letter 1, *supra* note 27, at 1 (stating that ''there is NO real customer 'priority' advantage gained by retail options customers because of the following: (1) More strikes and volatile markets (2) Payment for order flow accounting for a majority of customer orders (3) Market fragmentation (4) Price Improvement rules''). The Commission appreciates the commenter taking time to provide such an analysis. However, any such issues related to the options market structure are outside the scope of this approval order, and thus, cannot be addressed by the Commission herein.

[44] *See* Ianni Letter 1, *supra* note 27, at 4 (''I will knowingly pay a 'likely' higher price for an option just to save on the number of orders I send. I would argue that there is no such thing as 'best execution' for retail customers in the equity options market today because of the 390-order rule. You are asking all investors to sacrifice 'best execution' over customer status.'')

[45] *See* Ianni Letter 2, *supra* note 27, at 7.

[46] *See* IEX Response, *supra* note 28, at 3–4.

[47] Retail orders cannot affect the IEX bid-ask spread because those orders neither display nor rest on the Order Book.

[48] *See* Ianni Letter 2, *supra* note 27, at 5.

[49] *See* Notice, *supra* note 3, at 19916.

[50] *See* proposed IEX Rule 11.190(b)(15) and Supplementary Material .01 thereto.

Retail Liquidity Identifier and Revisions to RLP Orders

Next, the Exchange proposes to disseminate a Retail Liquidity Identifier when RLP orders resting on the Order Book aggregate to form at least one round lot, provided that the RLP order interest is resting at the Midpoint Price and is priced at least $0.001 better than the national best bid or national best offer. According to the Exchange, the purpose of the Retail Liquidity Identifier is to provide relevant market information to RMOs that there is some RLP trading interest at the Midpoint Price on the Exchange, thereby incentivizing RMOs to send Retail orders to IEX.[51] In conjunction with its proposal to disseminate the Retail Liquidity Identifier, the Exchange proposes to amend the definition of RLP orders so such orders can only be midpoint peg orders without a minimum quantity restriction. The Exchange believes that disseminating a Retail Liquidity Identifier to indicate RLP orders resting at the Midpoint Price would be unnecessarily complicated if RLP orders were to continue to be discretionary peg orders, because discretionary peg orders do not explicitly post to the Order Book at the Midpoint Price.[52] Likewise, the Exchange believes that attaching a minimum quantity to an RLP order would hinder a market participant's ability to determine the availability of trading interest at the Midpoint Price, given that the interest would only be available to counterparties able to meet the minimum quantities.[53]

As noted by the Exchange, similar retail liquidity identifiers are currently disseminated by other exchanges that offer retail programs, though other exchange programs typically allow the equivalent to RLP orders to rest undisplayed at prices that improve the displayed quote by subpenny increments.[54] The Commission believes that IEX's Retail Liquidity Identifier will serve a similar purpose as the identifiers currently disseminated by other exchanges, as it will inform market participants that have or control retail order flow about the availability of price improvement opportunities for Retail orders. In turn, market participants that have or control retail order flow would normally be expected to use that information as they assess the best prices available for the customer. Given the potential benefits to individual investors and any increased likelihood that they may be able to obtain midpoint executions, the Commission believes that the Retail Liquidity Identifier is appropriately designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.[55]

Furthermore, the Commission finds that limiting RLP orders to be midpoint peg orders without a minimum quantity option is an appropriate compliment to the proposed Retail Liquidity Identifier. As explained above, the Retail Liquidity Identifier is meant to notify RMOs that there is Midpoint-Priced liquidity available on the Exchange. As such, the Commission believes that requiring RLP orders to be midpoint peg orders without the option to designate a minimum quantity condition provides an increased chance of execution to incoming Retail orders and makes the Retail Liquidity Identifier a more reliable indicator of available midpoint liquidity.

Finally, as originally proposed, the revised RLP orders would have been given Order Book priority over non-displayed orders priced to execute at the Midpoint Price.[56] However, in Amendment No. 1, the Exchange revised its proposal so that the Exchange's regular priority rules (*i.e.,* price/time) would apply equally to RLP orders and such non-displayed orders, thus eliminating the originally proposed Order Book priority for RLP orders. IEX cites to precedent from at least one other exchange's retail program providing that when a retail liquidity providing order is at the same price as a non-displayed order, the orders will be ranked together with time priority.[57] The Commission finds that IEX's revised proposal to not provide a priority advantage to RLP orders over other non-displayed orders priced to execute at the Midpoint Price is not unfairly discriminatory as it does not provide an advantage to an order that will only interact with incoming Retail orders (*i.e.,* RLP orders) over orders that are not so restricted (*e.g.,* midpoint peg orders). Treating both in time priority and allowing incoming Retail orders to interact with either is designed to promote just and equitable principles of trade and not impose an inappropriate burden on competition.

For the foregoing reasons, the Commission believes that IEX's proposed changes to its Program are consistent with the Act in that they are reasonably designed to promote just and equitable principles of trade, 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 are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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–2021–06 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–2021–06. 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 this filing will also be available for inspection and copying at the principal

[51] *See* Notice, *supra* note 3, at 19914.

[52] *See id.* at 19915.

[53] *See id.*

[54] *See id.*

[55] In connection with this proposal, the Exchange states that it plans to submit a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS (''Quote Rule'') based on the Exchange's and its members' participation in the Program. *See id.* at 19914 n.39. In its filing, the Exchange asserts that the information proposed to be contained in the Retail Liquidity Identifier does not constitute a ''quote'' within the meaning of Regulation NMS because it would not include a specific price or size of the interest. *See id.* at 19914.

[56] *See* Notice, *supra* note 3, at 19914.

[57] *See* Amendment No. 1, *supra* note 7, at 8 (citing NYSE Arca Rule 7.44–E(l)).

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–2021–06 and should be submitted on or before August 9, 2021.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. Amendment No. 1 revises the original proposal by amending IEX Rule 11.232(e)(3)(A) to provide that RLP orders now will be ranked in time priority with non-displayed orders priced to execute at the Midpoint Price, rather than ahead of such orders as was originally proposed. Thus, at the priority level specified in IEX Rule 11.232(e)(3)(A)(iii), incoming Retail orders will execute against RLP orders and non-displayed orders priced to trade at the Midpoint Price in price/time priority.

In Amendment No. 1, the Exchange states that based on additional analysis of the potential benefits and burdens of RLP orders and non-displayed orders priced to trade at the Midpoint Price, it determined that RLP orders should be ranked in time priority with such other orders, consistent with the Exchange's regular price/time priority. The Exchange states that the proposed priority change does not raise any new or novel issues as it is consistent with the rules of other exchanges' retail liquidity programs, including NYSE Arca, as noted above.[58]

The changes to the proposal do not raise any novel regulatory issues, as they are consistent with the rules of other exchange retail programs previously approved by the Commission. Further, the changes assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act as discussed above. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[59] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

[58] *See supra* note 57 and accompanying text.

[59] 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[60] that the proposed rule change (SR–IEX–2021–06), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15199 Filed 7–16–21; 8:45 am]

BILLING CODE 8011–01–P

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92384; File No. SR–GEMX–2021–06]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 2, Section 5, Market Maker Quotations

July 13, 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 June 30, 2021, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 amend Options 2, Section 5, Market Maker Quotations.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend GEMX Rules at Options 2, Section 5, Market Maker Quotations. Currently, the Exchange requires Competitive Market Makers [3] and Primary Market Makers [4] to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the Exchange.[5] Quotations must meet the legal quote width requirements specified in Options 2, Section 4(b)(4).[6] On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member,[7] is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.[8] Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to Options 2, Section 5(e)(1) in any Quarterly Options Series, any adjusted options series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (''ETFs'') or with an expiration of twelve months or greater for index options. Competitive Market Makers may choose to quote such series in addition to regular series

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12).

[4] The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[5] Options 2, Section 5(e).

[6] Options 2, Section 4(b)(4) describes bid/ask differentials.

[7] The term ''Member'' means an organization that has been approved to exercise trading rights associated with Exchange Rights. *See* General 1, Section 1(a)(13)[sic].

[8] Options 2, Section 5(e)(1).