



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93217]

Order Granting Application of Investors Exchange LLC for a Limited Exemption from Rule 602 of Regulation NMS for its Retail Price Improvement Program

September 30, 2021.

By letter dated September 29, 2021 (the “Application”),¹ Investors Exchange LLC (“IEX” or “Exchange”) requests a limited exemption from the requirements of Rule 602 of Regulation NMS² (the “Quote Rule”) for its planned dissemination of a Retail Liquidity Identifier (“RLI”) to advertise the presence of non-displayed Retail Liquidity Provider (“RLP”) midpoint peg orders pursuant to recently approved enhancements to the Exchange’s Retail Price Improvement Program (the “Program”).³

In order to attract Retail orders to the exchange, IEX will notify market participants of the presence of RLP orders in a security by disseminating a RLI through

¹ See Letter from Claudia Crowley, Chief Regulatory Officer, IEX, to David Shillman, Associate Director, Division of Trading and Markets, Commission, dated September 29, 2021.

² 17 CFR 242.602.

³ See Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR-IEX-2021-06) (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) (“Order”). Under the amended Program, an IEX member that qualifies as a Retail Member Organization (“RMO”) can submit agency or riskless principal orders that reflect the trading interest of a natural person by using a “Retail order” modifier. See IEX Rule 11.190(b)(15) and its Supplementary Material .01 (defining “Retail order”). Such Retail orders are only eligible to execute at the midpoint price of the national best bid and national best offer or better. In turn, any IEX member is able to provide price improvement to Retail orders through RLP orders. While RLP orders will only execute against Retail orders, Retail orders can execute against other types of available liquidity at the midpoint price or better (e.g., regular midpoint peg orders or odd lot orders). See IEX Rule 11.190(b)(14) (defining “Retail Liquidity Provider Order”).

the appropriate securities information processor and the Exchange's proprietary market data feeds when RLP order interest, aggregated to form at least one round lot for a particular security, is available on IEX, provided that the RLP order interest is resting at the midpoint of the national best bid and national best offer ("Midpoint Price").⁴ The RLI will indicate the symbol for a particular security and the side (buy, sell, or buy and sell) of the RLP interest, but not its explicit price or size.⁵

When the Commission adopted the Quote Rule (then Rule 11Ac1-1) it sought to facilitate the establishment of a comprehensive composite quotation system across market centers as an integral component of a national market system.⁶ The Quote Rule requires national securities exchanges and national securities associations to, among other things, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges that is communicated on any national securities exchange by any responsible broker or dealer.⁷ Regulation NMS defines a "bid" or "offer" as the bid price or the offer price communicated by a member of a national securities exchange or member of a national

⁴ In addition, the Exchange will only disseminate an RLI when RLP interest is priced at least \$0.001 better than the national best bid or national best offer. Because RLP orders are midpoint peg orders, they will be priced at least \$0.001 better than the national best bid or national best offer except with respect to: (i) locked or crossed markets and (ii) sub-dollar quotes when the security's spread is less than \$0.002. See Securities Exchange Act Release No. 91523 (April 9, 2021), 86 FR 19912, 19915 (notice of IEX's proposal).

⁵ The RLI will not disseminate an explicit size, but only the availability of at least one round lot of RLP interest; the actual available size of RLP interest may be more.

⁶ See Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978). Regulation NMS redesignated Rule 11Ac1-1 as Regulation NMS Rule 602, but left the substance of the rule largely intact. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37570 (June 29, 2005) (File No. S7-10-04).

⁷ See 17 CFR 242.602(a)(1). The Quote Rule further provides that nothing shall preclude any national securities exchange from making available to vendors indications of interest or bids and offers for a subject security at any time such exchange is not required to do so. See 17 CFR 242.602(a)(4).

securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

Other exchanges that operate retail liquidity programs also disseminate retail liquidity identifiers, though those other exchange programs typically allow the equivalent to RLP orders to rest non-displayed at prices that improve the displayed quote by one or more subpenny increments and do not require such orders to be pegged to the Midpoint Price.⁸ IEX's Program is different because RLP orders can only be midpoint peg orders, which can only rest at the Midpoint Price.⁹ Thus, unlike the retail liquidity identifiers disseminated by other exchanges, IEX's RLI will convey a specific ascertainable price (i.e., the Midpoint Price).

IEX's RLI will serve a similar purpose to the identifiers currently disseminated by other exchanges, as it will inform market participants that route retail order flow about the availability of price improvement opportunities for retail orders. And, for IEX's Program specifically, the RLI will indicate the availability of midpoint priced interest, which can benefit retail investors by offering to them an opportunity for potentially substantial price improvement. IEX's Program, like other exchanges' retail liquidity programs, allows for the limited segmentation of retail order flow for the express purpose of allowing IEX to compete with other exchanges and off-exchange market makers to provide price improvement to retail customers, thus ensuring that retail customers can benefit from the better prices that liquidity providers are willing to give their orders.¹⁰

⁸ See, e.g., NYSE Arca Rule 7.33-E (Retail Liquidity Program).

⁹ While the RLI will not include an explicit size, it will indicate the presence of at least one round lot of midpoint interest.

¹⁰ See Order, *supra* note 2, 86 FR at 38168-69.

Under Rule 602(d) of Regulation NMS, the Commission may exempt from the provisions of the Quote Rule, either unconditionally or on specified terms and conditions, a national securities exchange (among others) if it determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.¹¹

The Commission hereby grants the Exchange a limited exemption from the Quote Rule to operate the Program and disseminate the RLI without having to include RLP interest in IEX's best bid or offer. For the reasons discussed below, the Commission has determined that it is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system to provide a limited exemption from Rule 602 of Regulation NMS with respect to IEX's Program.

In light of the opportunity for retail customers to obtain potentially substantial price improvement at midpoint prices under IEX's Program, and in the interests of facilitating the ability of IEX to compete to be able to provide that opportunity to Retail orders in the limited context of the Program, providing a limited exemption should promote competition between exchanges and between IEX and off-exchange market makers.

Broad dissemination of the RLI through the appropriate securities information processor should benefit retail customers by providing broker-dealers that route Retail orders with limited supplemental information about the availability of price improvement opportunities for Retail orders under the Program.¹² To the extent the RLI is successful in attracting Retail orders to the Program, the increased competition should benefit retail

¹¹ 17 CFR 242.602(d).

¹² The RLI will not reveal the presence of other midpoint interest. Non-displayed midpoint interest could be present on IEX outside of the Program, and Retail orders will be able to trade with that interest.

customers by providing a mechanism through which they can receive the better prices that liquidity providers are willing to give their orders. This exemption also should benefit market participants that seek the opportunity to interact directly with Retail orders, as any liquidity provider may submit RLP interest to provide better prices to retail customers on the Exchange. Quotations that Rule 602 requires to be included in an exchange's best bid and offer are used to establish the national best bid and offer for an NMS stock and are eligible for protection against trade-throughs under Rule 611 of Regulation NMS.¹³ Such quotations therefore must be accessible to all market participants on terms that are not unfair or unreasonably discriminatory. In contrast, access to RLP interest is limited to Retail orders because many market participants may be willing to offer liquidity to retail investors at better prices than they would be willing to offer to all market participants. RLP interest thereby can benefit retail investors by giving them an opportunity to receive better prices on exchanges, but it is unsuitable for other purposes, including establishing a national best bid and offer and eligibility for Rule 611 protection.

Accordingly, IT IS ORDERED, pursuant to Rule 602(d) of Regulation NMS, that IEX is exempt from Rule 602 of Regulation NMS with respect to IEX's Program specifically concerning the dissemination of the RLI to advertise the presence of RLP interest under the Program without including RLP interest in the Exchange's quotation. This exemption is conditioned on the Exchange continuing to conduct the Program substantially as described in the Exchange's request for exemptive relief and the current applicable Exchange rules, including the dissemination of the RLI through the appropriate securities information processor. Any changes thereto may cause the Commission to reconsider this exemption. The foregoing exemption is subject to

¹³ See 17 CFR 242.611.

modification or revocation at any time if the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁴ 17 CFR 200.30-3(a)(28).