



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-97341; File No. SR-IEX-2023-05]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Non-Displayed Discretionary Limit Orders to be Submitted with a Minimum Quantity Instruction

April 20, 2023.

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 7, 2023, 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 19(b)(1) under the Act,³ and Rule 19b-4 thereunder,⁴ IEX is filing with the Commission a proposal to allow non-displayed Discretionary Limit orders to be submitted with a minimum quantity instruction. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁵

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.

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

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 s 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(b)(7) to offer Members⁶ the option of including a Minimum Quantity (“MQTY”)⁷ instruction on a non-displayed⁸ Discretionary Limit (“D-Limit”) order. As proposed, a non-displayed D-Limit MQTY order would function exactly like any other MQTY order at IEX.

Background

Since the approval of its exchange application, IEX, like other equities exchanges⁹, has offered Members¹⁰ the option of including a MQTY instruction on a non-displayed order. IEX’s rulebook defines a MQTY order as a non-displayed, non-routable order that enables a Member to specify an “effective minimum quantity”, which is the minimum share amount at which the order will execute.¹¹ A MQTY order will not execute unless the volume of contra-side liquidity available to execute against the order meets or exceeds the effective minimum quantity.

⁶ See IEX Rule 1.160(s).

⁷ See IEX Rule 11.190(b)(11).

⁸ See IEX Rule 11.190(b)(3).

⁹ See, e.g., Cboe BZX Exchange, Inc. Rule 11.9(c)(5); MEMX, LLC Rule 11.6(f); The Nasdaq Stock Market LLC Rule 4703(e); and New York Stock Exchange LLC Rule 7.31(i)(3).

¹⁰ See IEX Rule 1.160(s).

¹¹ See IEX Rule 11.190(b)(11).

IEX understands that some market participants use MQTY orders as part of a trading strategy designed to limit the price impact on a security when passively executing larger orders. In other words, MQTY orders are often used to reduce the likelihood of a larger resting order interacting with small orders entered by professional traders, possibly adversely impacting the execution of their larger order. For example, professional traders may use small pinging orders to detect the presence of a large resting order and then use that information to cause the quotes in that security to widen or skew in a manner that adversely impacts the price that the resting order can trade at. The Commission has long recognized this concern:

Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit cost for large investors (who often represent the consolidated investments of many individuals) is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled.”¹²

A MQTY order resting on the IEX Order Book¹³ will only execute with a willing¹⁴ contra-side order that satisfies the resting order’s effective minimum quantity. For active orders¹⁵, IEX offers Members three options for how a MQTY order will determine satisfaction of its effective limit quantity parameter: Composite; Minimum Execution Size with Cancel Remaining (“MinExec Cancel Remaining”); and Minimum Execution Size with All or None Remaining (“MinExec AON Remaining”).¹⁶ When an active MQTY order is marked Composite, it will execute against all willing contra-side resting orders of any size, provided that the aggregate execution size is equal to or greater than the active order’s effective minimum

¹² See Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10581 (February 28, 2000) (SR-NYSE-99-48).

¹³ See IEX Rule 1.160(p).

¹⁴ Pursuant to IEX Rule 11.190(b)(11) a “willing” contra-side order is one that is priced so as to be marketable against the MQTY order in question.

¹⁵ An “active order” is an order checking the Order Book for contra-side interest against which to execute and includes new incoming orders as well as orders rechecking the Order Book pursuant to IEX Rule 11.230(a)(4)(D). There can only be one active order for each symbol at any given time. See IEX Rule 1.160(b).

¹⁶ See IEX Rule 11.190(b)(11)(G).

quantity. When an active MQTY order is marked either MinExec Cancel Remaining or MinExec AON Remaining, it will execute against each willing contra-side resting order in priority, provided that each individual execution size meets the active order's effective minimum quantity and satisfies the MQTY order's time-in-force ("TIF") terms.¹⁷ Upon reaching a resting order that would trade with the active MQTY order based on its price, but does not satisfy its effective minimum quantity, the active MQTY order will post to the Order Book or cancel back to the User as per the order's TIF and MQTY terms. For example, if the active MQTY order has a TIF of IOC or is designated as MinExec Cancel Remaining, then any unexecuted shares will cancel back to the Member. But if the active MQTY order is designated as MinExec AON Remaining and has a TIF of DAY, GTX, SYS, or GTT, then any unexecuted shares will post to the Order Book. If the remaining size of a MQTY order designated as MinExec AON Remaining is smaller than the effective minimum quantity of the order, the effective minimum quantity of the order will change to equal the number of shares remaining.

In October 2020¹⁸, IEX introduced a new type of limit order, the D-Limit order¹⁹, which is designed to help protect liquidity providers from potential adverse selection during periods of quote instability in a fair and nondiscriminatory manner.²⁰ 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).²¹

¹⁷ See IEX Rule 11.190(c). For example, an active MQTY order with a TIF of FOK, like any FOK order, will only execute for its full quantity, or otherwise be canceled.

¹⁸ See IEX Trading Alert 2020-029, available at <https://iextrading.com/alerts/#/126>.

¹⁹ See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15) ("D-Limit Approval Order").

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

²¹ See IEX Rules 11.190(b)(7) and 11.190(g).

Currently, both displayed and non-displayed D-Limit orders cannot be a MQTY order.²² While IEX offers most non-displayed orders the ability to include a MQTY instruction, IEX did not offer non-displayed D-Limit MQTY orders at the time of their introduction to reduce technical complexity. However, in the more than two years since the introduction of D-Limit orders, IEX has received informal feedback from Members indicating that they would like to be able to submit non-displayed D-Limit orders with a MQTY instruction to decrease the potential price impact of large D-Limit orders. Additionally, these Members indicate that they would submit more non-displayed D-Limit orders if they could use a MQTY instruction to set a minimum size for each fill. Based on this feedback, IEX proposes to enable fully non-displayed D-Limit orders to be MQTY orders, which is consistent with how IEX treats other fully non-displayed limit orders.²³ Specifically, IEX proposes to amend IEX Rule 11.190(b)(7)(F)(vi), which currently states that a D-Limit order may not be a MQTY²⁴, to instead read as follows: “Non-displayed Discretionary Limit orders may be a MQTY, as defined in paragraph (11) below. Displayed and partially displayed (i.e., reserve) Discretionary Limit orders may not be a MQTY, as defined in paragraph (11) below.”²⁵ IEX is proposing no other changes to D-Limit orders and no changes at all to MQTY functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with 6(b) of the Act,²⁶ in general, and furthers the objectives of 6(b)(5),²⁷ in particular, in that it is designed to prevent

²² See IEX Rule 11.190(b)(7)(F)(vi).

²³ See IEX Rule 11.190(a)(2)(F). Reserve orders, being partially displayed and partially non-displayed, are not able to be MQTY orders. See IEX Rule 11.190(b)(2)(H). Consistent with this functionality, IEX’s proposal would not change the fact that a D-Limit reserve order cannot be a MQTY order.

²⁴ See IEX Rule 11.190(b)(7)(F)(vi).

²⁵ See Proposed IEX Rule 11.190(b)(7)(F)(vi).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

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 non-displayed liquidity to the Exchange. As noted in the Purpose section, the proposed rule change is responsive to informal feedback from some Members, stating that they want to combine the benefits of a non-displayed D-Limit order with those of a MQTY order.

By providing additional functionality to non-displayed D-Limit orders, IEX believes that the proposed rule change may attract additional liquidity to the Exchange by incentivizing Members to submit larger, non-displayed D-Limit orders to the Exchange, in particular Members that are not currently resting non-displayed D-Limit orders on IEX. To the extent this proposal is successful in attracting more non-displayed D-Limit orders to the Exchange, IEX believes it will provide an overall benefit to market participants generally, even though these larger MQTY orders will not always interact with smaller orders that are not able to satisfy the MQTY constraints. Thus, IEX believes this proposal supports the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange further believes that the proposed rule change is consistent with the Act because it would be available to all Members on a fair, equal and nondiscriminatory basis regardless of their technological sophistication. Moreover, the proposal is designed to incentivize the entry of additional non-displayed D-Limit orders by providing MQTY functionality to support Members' ability to control the size and price impact of the execution of such orders. To the extent that such incentive is successful in increasing the overall liquidity pool available at IEX, all market

participants, including takers of liquidity, will benefit.

Furthermore, because MQTY orders surrender execution priority if their MQTY conditions are not satisfied²⁸, when a D-Limit MQTY order is unable to trade with a contra-side order because of its MQTY instruction, if there is another order resting on the Order Book behind the D-Limit order, such order could trade with the contra-side order. Therefore, IEX does not believe that increasing the number of MQTY orders on the Exchange (which is designed to increase liquidity on IEX) would necessarily reduce the overall likelihood of MQTY contra-side orders executing on IEX, which is consistent with the purposes of the Act to protect investors and the public interest.

In addition, as noted in the Purpose section, a D-Limit MQTY order is a combination of two order types the Commission has already approved – MQTY orders– which are also a common order type on equity exchanges²⁹– and D-Limit orders.³⁰ And all Members would be eligible to include the optional MQTY instruction on their fully non-displayed D-Limit orders in the same manner.

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.

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

²⁸ See IEX Rule 11.220(a)(5).

²⁹ See *supra* note 9.

³⁰ See *supra* note 12.

markets by further enhancing IEX's D-Limit order type functionality. As discussed in the Purpose section, the proposal is designed to incentivize the entry of additional non-displayed liquidity providing orders on IEX by offering Members the flexibility of including an optional MQTY instruction on fully non-displayed D-Limit orders. By giving more opportunities to Members to tailor D-Limit orders to their trading strategies, IEX believes this proposal will increase the overall liquidity profile on the Exchange, as discussed in the Statutory Basis section.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members would be eligible to include the optional MQTY instruction on their fully non-displayed D-Limit orders in the same manner. Moreover, the proposal would provide potential benefits to all Members, as discussed in the Statutory Basis section, to the extent that 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 with a MQTY instruction.

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 19(b)(3)(A)³¹ of the Act and Rule 19b-4(f)(6)³² 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 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.³³

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4³⁴ 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 MQTY 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 19(b)(3)(A) of the Act³⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.³⁶

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 shall institute proceedings under 19(b)(2)(B)³⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

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.

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 15 U.S.C. 78s(b)(3)(A).

³⁶ 17 CFR 240.19b-4(f)(6).

³⁷ 15 U.S.C. 78s(b)(2)(B).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2023-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2023-05. This file number should be included on the subject line if e-mail 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-IEX-2023-05,

and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,
Assistant Secretary.

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³⁸ 17 CFR 200.30-3(a)(12).