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Page 1 of \* 36

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 13

Amendment No. (req. for Amendments \*)

Filing by Investors' Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Introduce a New Post Only Order Parameter Instruction.

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Nathaniel Last Name \* Kolodny

Title \* Lead Regulation Counsel

E-mail \* nathaniel.kolodny@iextrading.com

Telephone \* (646) 343-2034 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Investors' Exchange LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 11/15/2023

(Title \*)

By Nathaniel Kolodny

Lead Regulation Counsel

(Name \*)

Nathaniel  
Kolodny

Digitally signed by Nathaniel  
Kolodny  
Date: 2023.11.15 17:28:51  
-05'00'

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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Post Only Order 19b4 v4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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Post Only Order Ex 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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Post Only Order Ex 5 v3.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to introduce a new Post Only order parameter instruction.

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>3</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the

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

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

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

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

proposed rule change are:

Claudia Crowley  
Chief Regulatory Officer  
Investors Exchange LLC  
646-343-2041

Nathaniel Kolodny  
Lead Regulation Counsel  
Investors Exchange LLC  
646-343-2034

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

a. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190 to introduce a new Post Only order parameter instruction.<sup>5</sup> As proposed, a Post Only parameter instruction would be available for a displayable, non-routable order priced at or above \$1.00 per share (a "Post Only order"). A Post Only order would not remove liquidity from the IEX Order Book<sup>6</sup> except in specific circumstances as described below. The Post Only order is designed to incentivize the posting of displayed liquidity on the Exchange and to offer IEX Members<sup>7</sup> greater determinism and flexibility in posting liquidity on the Exchange. IEX also proposes to introduce a new Trade Now<sup>8</sup> order instruction, which would allow certain resting non-displayed orders (described below) to convert into an executable order that removes liquidity against an incoming Post Only order that would otherwise lock the resting order (a transaction in which the Post Only order would be the maker of liquidity and the Trade Now order would be the taker of liquidity). The Trade Now instruction, when paired with Post Only orders, is designed to encourage more executions of marketable orders at IEX. In addition, IEX proposes to make conforming edits to several order type definitions contained in IEX Rule 11.190 to specify which order types may be

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<sup>5</sup> See Proposed IEX Rule 11.190(b)(20).

<sup>6</sup> See IEX Rule 1.160(p).

<sup>7</sup> See IEX Rule 1.160(s).

<sup>8</sup> See Proposed IEX Rule 11.190(b)(21).

submitted as a Post Only order, and which order types will include the Trade Now instruction, either by default or optionally.

IEX notes that every other national securities exchange that trades equities offers nearly identical post only order types<sup>9</sup> and most also offer trade now functionality<sup>10</sup> to their members. As proposed, IEX's Post Only order type is structured in a substantially similar manner, with minor differences (described below) limited to the orders for which the functionality is available rather than the manner in which is applied.<sup>11</sup>

### Post Only Orders

As described in Proposed IEX Rule 11.190(b)(20), a Post Only order would be a displayed, non-routable limit<sup>12</sup> or Discretionary Limit<sup>13</sup> order that would not remove liquidity from the IEX Order Book other than in the following circumstances:

First, a Post Only order will remove contra-side liquidity from the IEX Order Book if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided (the "Sum of Fees"). To determine at the time of a potential execution whether the Sum of Fees when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, the Exchange will compare the price improvement (i.e., available execution

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<sup>9</sup> See, e.g., Cboe BZX Exchange, Inc. ("BZX") Rule 11.9(c)(6); MEMX Rule 11.6(l)(2); NASDAQ Stock Market LLC ("Nasdaq") Rule 4702(b)(4); MIAX Pearl Rule 2614(c); New York Stock Exchange ("NYSE") Rule 7.31(e)(2).

<sup>10</sup> See, e.g., BZX Rule 11.9(c)(12); NYSE Rule 7.31(d)(2)(B); Nasdaq Rule 4703(m).

<sup>11</sup> See infra notes 17, 19.

<sup>12</sup> See IEX Rule 11.190(a)(1).

<sup>13</sup> See IEX Rule 11.190(b)(7).

price to trade on entry versus the limit price of the order) to the difference between the sum of the fees charged for such execution and the rebate that would be provided if the order posted to the IEX Order Book and subsequently provided liquidity.

Post Only orders by default would be subject to display-price sliding as set forth in IEX Rule 11.190(h)(1), but the Member may provide an optional instruction to cancel any untraded quantity of a Post Only order that would otherwise be subject to display-price sliding. Thus, during Regular Market Hours, if the limit price of the Post Only order locked or crossed an order on the IEX Order Book, depending upon the Member's instructions, the Post Only order would either slide to a price one Minimum Price Variant ("MPV")<sup>14</sup> less aggressive than the current Protected Quotation<sup>15</sup>, or be canceled back to the Member. This functionality is identical to that of several other equities exchanges.<sup>16</sup>

IEX is also proposing that Post Only orders must be at least a round or mixed lot sized order on entry and must be displayed. Because this proposal is designed to incentivize displayed liquidity in general and price discovery in particular, IEX believes that it is appropriate to limit Post Only orders to those that could become Protected Quotations. IEX notes that although other exchanges allow Post Only orders to be non-displayed or to be displayed odd lot sized orders, until 2022, NYSE also did not allow non-displayed or displayed odd lot sized orders to use its post only functionality.<sup>17</sup> Additionally, IEX is proposing to not allow reserve<sup>18</sup> orders be Post Only orders. IEX notes that although other exchanges allow Post Only orders to be reserve

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<sup>14</sup> See IEX Rule 11.210.

<sup>15</sup> See IEX Rule 1.160(bb).

<sup>16</sup> See, e.g., BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(A)(ii).

<sup>17</sup> See Securities Exchange Act Release No. 95209 (July 7, 2022), 87 FR 41832, 41835 (July 13, 2022) (SR-NYSE-2022-25).

<sup>18</sup> See IEX Rule 11.190(b)(2).

orders, until recently, NYSE also did not allow reserve orders to use its post only functionality.<sup>19</sup> IEX believes its proposal to not allow reserve orders to be Post Only orders is consistent with its proposal to not allow non-displayed orders to be Post Only orders, because reserve orders have both a displayed and non-displayed portion. IEX also notes that because it charges the same amount for adding or removing non-displayed liquidity, the economic benefits of a Post Only order would not apply to a non-displayed order submitted to IEX.

Further, Proposed IEX Rule 11.190(b)(20) specifies that Post Only orders must have a time-in-force (“TIF”) of DAY, GTX, SYS, or GTT because they will only trade during Regular Market Hours, and that they may not be an Intermarket Sweep Order, both because they are non-routable orders and because ISOs are meant to take liquidity resting on the Exchange and away markets while Post Only orders are designed to add displayed liquidity to IEX’s Order Book.

Finally, the Post Only order parameter instruction would not be operative for orders to buy or sell a security priced below \$1.00 per share. Thus, such orders that include the Post Only order parameter instruction would function in the same manner as regular displayed limit orders or D-Limit orders; they would remove contra-side liquidity from the IEX Order Book on entry without consideration of whether the Sum of Fees equals or exceeds the price improvement per share, and otherwise post to the IEX Order Book. IEX believes that this approach is appropriate in that IEX does not offer rebates for orders that add displayed liquidity priced below \$1.00 so the economics for a Post Only order are less meaningful. IEX notes that this approach is similar to that of other exchanges with respect to securities priced below \$1.00 per share.<sup>20</sup>

#### Trade Now Instruction

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<sup>19</sup> See Securities Exchange Act Release No. 98891 (November 8, 2023), 88 FR 78407, 78408 (November 15, 2023) (SR-NYSE-2023-40).

<sup>20</sup> See, e.g., BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(i)(A).

IEX also proposes to add IEX Rule 11.190(b)(21), to introduce the “Trade Now” order instruction. As proposed, Trade Now would be an instruction on an order resting on the IEX Order Book that, when locked by an incoming Post Only order that does not remove liquidity pursuant to Proposed IEX Rule 11.190(b)(20), causes such order to be converted to an executable order that removes liquidity against such incoming order. As proposed, non-displayed limit orders (including non-displayed portions of reserve<sup>21</sup> orders and non-displayed Discretionary Limit orders) would always include a Trade Now order instruction, while for Midpoint Peg<sup>22</sup>, Fixed Midpoint Peg<sup>23</sup>, Offset Peg<sup>24</sup>, and Market Peg<sup>25</sup> orders the Trade Now instruction would be optional. IEX makes this proposal because the above four pegged order types are all able to book at prices between the NBB and the NBO, which means they all could match with (or be locked by) an incoming Post Only order. As proposed, a resting pegged order with the optional Trade Now instruction would be the taker of liquidity and the Post Only order would be the maker of liquidity (unless the Sum of Fees calculation caused the Post Only order to take liquidity on entry). IEX also has pegged order types that book one MPV less aggressive than the Primary Quotation, and it is not proposing to allow these orders to have a Trade Now instruction because they will not be able to match with (or be locked by) an incoming Post Only order.<sup>26</sup> Similarly, IEX is not proposing to allow resting Retail Liquidity Provider orders to have

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<sup>21</sup> See IEX Rule 11.190(b)(2).

<sup>22</sup> See IEX Rule 11.190(b)(9).

<sup>23</sup> See IEX Rule 11.190(b)(19).

<sup>24</sup> See IEX Rule 11.190(b)(13).

<sup>25</sup> See IEX Rule 11.190(b)(18).

<sup>26</sup> See IEX Rules 11.190(b)(8) (Primary Peg order), 11.190(b)(10) (Discretionary Peg order), and 11.190(b)(16) (Corporate Discretionary Peg order).

a Trade Now feature, because they are not eligible to trade with a Post Only order.<sup>27</sup>

The Trade Now instruction would provide non-displayed orders resting on the IEX Order Book with a greater ability to receive an execution when that resting order is locked by an incoming Post Only order, rather than creating the possibility of the incoming Post Only order locking the resting non-displayed order. Thus, the proposed Trade Now instruction assists in the avoidance of an internally locked IEX Order Book (notwithstanding that such lock would not be displayed by the Exchange) by facilitating the execution of orders that would otherwise lock each other.

If an incoming Post Only order matches with a resting non-displayed order on entry with the Trade Now instruction, the Post Only order would be treated as a displayed order and would receive a rebate of \$0.0004 per share. The order with the Trade Now instruction, having become an executable taking order, would be charged \$0.0010 per share, which is the same fee IEX charges for both non-displayed liquidity-adding and taking orders. Thus, the order with the Trade Now instruction is able to get an execution with no change to the fees it would be charged, while the Post Only order would also get an execution with the rebate the Member expects to receive when submitting a displayed order.

#### Conforming Changes

As described above, only certain order types are eligible to be Post Only orders. Therefore, IEX proposes to amend IEX Rules 11.190(b)(1) (“Displayed Order”) and 11.190(b)(7) (“Discretionary Limit Order”), to specify that a displayed, non-routable, round or mixed lot limit or Discretionary Limit order may include a Post Only instruction, as defined in Proposed IEX Rule 11.190(b)(20).

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<sup>27</sup> See IEX Rule 11.190(b)(14).

Similarly, as described above, only certain order types are eligible to have a Trade Now instruction. Therefore, IEX proposes to amend IEX Rules 11.190(a)(1), 11.190(b)(2), and 11.190(b)(7), to specify that non-displayed limit orders, non-displayed portions of reserve orders, and non-displayed Discretionary Limit orders will include a Trade Now instruction as defined in Proposed IEX Rule 11.190(b)(21). Because IEX proposes to allow Members to include a Trade Now instruction on pegged orders that could interact with a Post Only order, IEX is proposing to amend IEX Rules 11.190(b)(9), 11.190(b)(19), 11.190(b)(13), and 11.190(b)(18) to specify that a Member may include a Trade Now instruction with Midpoint Peg, Fixed Midpoint Peg, Offset Peg, and Market Peg orders, respectively.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>28</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>29</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to provide more flexibility and opportunities for Members to add displayed liquidity to the Exchange. As noted in the Purpose section, Post Only orders, particularly when coupled with Trade Now functionality for some non-displayed orders, would provide fee determinism for Members seeking to add liquidity

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<sup>28</sup> 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

to the Exchange. This in turn is designed to encourage the posting of more displayed liquidity on the Exchange, and 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. 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.

IEX also believes it is consistent with the Act to adjust the price of Post Only orders as needed to post to the Order Book in compliance with Rule 610(d) of Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Member entering the Post Only order. Post Only orders are thus designed to allow Members to achieve fee determinism, while also providing displayed liquidity to the market and thereby contribute to public price discovery in a manner that is consistent with the Act.

IEX also believes that the proposal to give Members the option of having Post Only orders be subject to display price sliding or cancel promotes price discovery and provision of greater liquidity by facilitating the display of an order at its chosen limit price. Because this flexibility will further encourage Members to submit Post Only orders to IEX, which will in turn increase the displayed liquidity on the Exchange, IEX believes that 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.

Additionally, IEX believes that its proposed approach to inclusion of the Trade Now instruction (as described in the Purpose section) is consistent with the purposes of the Act because it is designed to avoid internally locking the IEX Order Book by facilitating the

execution of orders that would otherwise post, or remain posted, to the IEX Order Book at prices that would otherwise lock. Additionally, the Trade Now instruction would result in more executions of otherwise marketable orders, which benefits both parties to the transaction as well as the market as a whole by providing relevant price discovery. 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.

In addition, as noted in the Purpose section, every aspect of IEX's proposal is already available on at least one other equities exchange, with the exception that IEX will not allow a non-displayed, reserve, or displayed odd lot order to be a Post Only order.<sup>30</sup> As discussed in the Purpose section, that functionality is identical to functionality that was offered by the New York Stock Exchange until 2022. IEX notes that these minor differences are limited to the orders for which the functionality is available rather than the manner in which is applied. Because these minor differences from other exchanges' functionality are not based on competitive considerations but rather simply to provide for reasonably predictable outcomes in a manner consistent with IEX's system design, IEX believes that 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.

And IEX believes that the proposed conforming changes further the purposes of the Act because they provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion by market participants.

Finally, IEX does not believe that the proposed changes raise any new or novel material

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<sup>30</sup> See supra notes 17, 19.

issues that have not already been considered by the Commission in connection with existing order types offered by other national securities exchanges, which 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.

4. 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 incentivizing the posting of displayed liquidity on the Exchange. As noted above, the Exchange believes the proposed rule changes would generally align order handling on IEX with trading functionality on other equity exchanges and thus would promote competition among exchanges by offering member organizations similar functionality and order handling options available on other exchanges. The Exchange also believes that, to the extent the proposed changes would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhance market quality for all market participants. Moreover, competing exchanges have and can continue to adopt the same functionality contained in this proposal, subject to the SEC rule change process, as discussed in the Purpose and 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 submit Post Only orders and to include

Trade Now instructions on eligible pegged 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 allowing Post Only orders incentivizes the provision of more displayed liquidity on IEX.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>31</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>32</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>33</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4.<sup>34</sup> because it would not significantly affect the protection of investors or the

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<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4.

<sup>33</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

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 functionality currently offered by many other equities exchanges, 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. Accordingly, IEX has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>35</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>36</sup>

The Exchange will implement the proposed rule change within 120 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.

8. Proposed Rule Change Based on the Rules of Another Self-Regulatory Organization or of the Commission

This proposal is based on functionality offered by every other equities exchange. In particular, the Post Only order type is based on the BZX Post Only order type.<sup>37</sup> Additionally, the Trade Now functionality is based on the BZX Non-Display Swap functionality.<sup>38</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

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<sup>35</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> See BZX Rule 11.9(c)(6).

<sup>38</sup> See BZX Rule 11.9(c)(12).

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of Proposed Rule Change.

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2023-13

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Introduce a New Post Only Order Parameter Instruction.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder<sup>3</sup>, notice is hereby given that, on (date), the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act<sup>4</sup>, and Rule 19b-4 thereunder<sup>5</sup>, the Exchange is filing with the Commission a proposed rule change to introduce a new Post Only order parameter instruction. The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>6</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this proposed rule filing is to amend IEX Rule 11.190 to introduce a new Post Only order parameter instruction.<sup>8</sup> As proposed, a Post Only parameter instruction would be available for a displayable, non-routable order priced at or above \$1.00 per share (a "Post Only order"). A Post Only order would not remove liquidity from the IEX Order Book<sup>9</sup> except in specific circumstances as described below. The Post Only order is designed to incentivize the posting of displayed liquidity on the Exchange and to offer IEX Members<sup>10</sup> greater determinism and flexibility in posting liquidity on the Exchange. IEX also proposes to introduce a new Trade Now<sup>11</sup> order instruction, which would allow certain resting non-displayed orders (described

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<sup>8</sup> See Proposed IEX Rule 11.190(b)(20).

<sup>9</sup> See IEX Rule 1.160(p).

<sup>10</sup> See IEX Rule 1.160(s).

<sup>11</sup> See Proposed IEX Rule 11.190(b)(21).

below) to convert into an executable order that removes liquidity against an incoming Post Only order that would otherwise lock the resting order (a transaction in which the Post Only order would be the maker of liquidity and the Trade Now order would be the taker of liquidity). The Trade Now instruction, when paired with Post Only orders, is designed to encourage more executions of marketable orders at IEX. In addition, IEX proposes to make conforming edits to several order type definitions contained in IEX Rule 11.190 to specify which order types may be submitted as a Post Only order, and which order types will include the Trade Now instruction, either by default or optionally.

IEX notes that every other national securities exchange that trades equities offers nearly identical post only order types<sup>12</sup> and most also offer trade now functionality<sup>13</sup> to their members. As proposed, IEX's Post Only order type is structured in a substantially similar manner, with minor differences (described below) limited to the orders for which the functionality is available rather than the manner in which is applied.<sup>14</sup>

#### Post Only Orders

As described in Proposed IEX Rule 11.190(b)(20), a Post Only order would be a displayed, non-routable limit<sup>15</sup> or Discretionary Limit<sup>16</sup> order that would not remove liquidity from the IEX Order Book other than in the following circumstances:

First, a Post Only order will remove contra-side liquidity from the IEX Order Book if the value of such execution when removing liquidity equals or exceeds the value of such execution if

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<sup>12</sup> See, e.g., Cboe BZX Exchange, Inc. ("BZX") Rule 11.9(c)(6); MEMX Rule 11.6(l)(2); NASDAQ Stock Market LLC ("Nasdaq") Rule 4702(b)(4); MIAX Pearl Rule 2614(c); New York Stock Exchange ("NYSE") Rule 7.31(e)(2).

<sup>13</sup> See, e.g., BZX Rule 11.9(c)(12); NYSE Rule 7.31(d)(2)(B); Nasdaq Rule 4703(m).

<sup>14</sup> See *infra* notes 20, 22.

<sup>15</sup> See IEX Rule 11.190(a)(1).

<sup>16</sup> See IEX Rule 11.190(b)(7).

the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided (the “Sum of Fees”). To determine at the time of a potential execution whether the Sum of Fees when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, the Exchange will compare the price improvement (i.e., available execution price to trade on entry versus the limit price of the order) to the difference between the sum of the fees charged for such execution and the rebate that would be provided if the order posted to the IEX Order Book and subsequently provided liquidity.

Post Only orders by default would be subject to display-price sliding as set forth in IEX Rule 11.190(h)(1), but the Member may provide an optional instruction to cancel any untraded quantity of a Post Only order that would otherwise be subject to display-price sliding. Thus, during Regular Market Hours, if the limit price of the Post Only order locked or crossed an order on the IEX Order Book, depending upon the Member’s instructions, the Post Only order would either slide to a price one Minimum Price Variant (“MPV”)<sup>17</sup> less aggressive than the current Protected Quotation<sup>18</sup>, or be canceled back to the Member. This functionality is identical to that of several other equities exchanges.<sup>19</sup>

IEX is also proposing that Post Only orders must be at least a round or mixed lot sized order on entry and must be displayed. Because this proposal is designed to incentivize displayed liquidity in general and price discovery in particular, IEX believes that it is appropriate to limit Post Only orders to those that could become Protected Quotations. IEX notes that although other exchanges allow Post Only orders to be non-displayed or to be displayed odd lot sized orders,

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<sup>17</sup> See IEX Rule 11.210.

<sup>18</sup> See IEX Rule 1.160(bb).

<sup>19</sup> See, e.g., BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(A)(ii).

until 2022, NYSE also did not allow non-displayed or displayed odd lot sized orders to use its post only functionality.<sup>20</sup> Additionally, IEX is proposing to not allow reserve<sup>21</sup> orders be Post Only orders. IEX notes that although other exchanges allow Post Only orders to be reserve orders, until recently, NYSE also did not allow reserve orders to use its post only functionality.<sup>22</sup> IEX believes its proposal to not allow reserve orders to be Post Only orders is consistent with its proposal to not allow non-displayed orders to be Post Only orders, because reserve orders have both a displayed and non-displayed portion. IEX also notes that because it charges the same amount for adding or removing non-displayed liquidity, the economic benefits of a Post Only order would not apply to a non-displayed order submitted to IEX.

Further, Proposed IEX Rule 11.190(b)(20) specifies that Post Only orders must have a time-in-force (“TIF”) of DAY, GTX, SYS, or GTT because they will only trade during Regular Market Hours, and that they may not be an Intermarket Sweep Order, both because they are non-routable orders and because ISOs are meant to take liquidity resting on the Exchange and away markets while Post Only orders are designed to add displayed liquidity to IEX’s Order Book.

Finally, the Post Only order parameter instruction would not be operative for orders to buy or sell a security priced below \$1.00 per share. Thus, such orders that include the Post Only order parameter instruction would function in the same manner as regular displayed limit orders or D-Limit orders; they would remove contra-side liquidity from the IEX Order Book on entry without consideration of whether the Sum of Fees equals or exceeds the price improvement per share, and otherwise post to the IEX Order Book. IEX believes that this approach is appropriate

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<sup>20</sup> See Securities Exchange Act Release No. 95209 (July 7, 2022), 87 FR 41832, 41835 (July 13, 2022) (SR-NYSE-2022-25).

<sup>21</sup> See IEX Rule 11.190(b)(2).

<sup>22</sup> See Securities Exchange Act Release No. 98891 (November 8, 2023), 88 FR 78407, 78408 (November 15, 2023) (SR-NYSE-2023-40).

in that IEX does not offer rebates for orders that add displayed liquidity priced below \$1.00 so the economics for a Post Only order are less meaningful. IEX notes that this approach is similar to that of other exchanges with respect to securities priced below \$1.00 per share.<sup>23</sup>

#### Trade Now Instruction

IEX also proposes to add IEX Rule 11.190(b)(21), to introduce the “Trade Now” order instruction. As proposed, Trade Now would be an instruction on an order resting on the IEX Order Book that, when locked by an incoming Post Only order that does not remove liquidity pursuant to Proposed IEX Rule 11.190(b)(20), causes such order to be converted to an executable order that removes liquidity against such incoming order. As proposed, non-displayed limit orders (including non-displayed portions of reserve<sup>24</sup> orders and non-displayed Discretionary Limit orders) would always include a Trade Now order instruction, while for Midpoint Peg<sup>25</sup>, Fixed Midpoint Peg<sup>26</sup>, Offset Peg<sup>27</sup>, and Market Peg<sup>28</sup> orders the Trade Now instruction would be optional. IEX makes this proposal because the above four pegged order types are all able to book at prices between the NBB and the NBO, which means they all could match with (or be locked by) an incoming Post Only order. As proposed, a resting pegged order with the optional Trade Now instruction would be the taker of liquidity and the Post Only order would be the maker of liquidity (unless the Sum of Fees calculation caused the Post Only order to take liquidity on entry). IEX also has pegged order types that book one MPV less aggressive than the Primary Quotation, and it is not proposing to allow these orders to have a Trade Now

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<sup>23</sup> See, e.g., BZX Rule 11.9(c)(6); MIAX Pearl Rule 2614(c)(2)(i)(A).

<sup>24</sup> See IEX Rule 11.190(b)(2).

<sup>25</sup> See IEX Rule 11.190(b)(9).

<sup>26</sup> See IEX Rule 11.190(b)(19).

<sup>27</sup> See IEX Rule 11.190(b)(13).

<sup>28</sup> See IEX Rule 11.190(b)(18).

instruction because they will not be able to match with (or be locked by) an incoming Post Only order.<sup>29</sup> Similarly, IEX is not proposing to allow resting Retail Liquidity Provider orders to have a Trade Now feature, because they are not eligible to trade with a Post Only order.<sup>30</sup>

The Trade Now instruction would provide non-displayed orders resting on the IEX Order Book with a greater ability to receive an execution when that resting order is locked by an incoming Post Only order, rather than creating the possibility of the incoming Post Only order locking the resting non-displayed order. Thus, the proposed Trade Now instruction assists in the avoidance of an internally locked IEX Order Book (notwithstanding that such lock would not be displayed by the Exchange) by facilitating the execution of orders that would otherwise lock each other.

If an incoming Post Only order matches with a resting non-displayed order on entry with the Trade Now instruction, the Post Only order would be treated as a displayed order and would receive a rebate of \$0.0004 per share. The order with the Trade Now instruction, having become an executable taking order, would be charged \$0.0010 per share, which is the same fee IEX charges for both non-displayed liquidity-adding and taking orders. Thus, the order with the Trade Now instruction is able to get an execution with no change to the fees it would be charged, while the Post Only order would also get an execution with the rebate the Member expects to receive when submitting a displayed order.

#### Conforming Changes

As described above, only certain order types are eligible to be Post Only orders. Therefore, IEX proposes to amend IEX Rules 11.190(b)(1) (“Displayed Order”) and

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<sup>29</sup> See IEX Rules 11.190(b)(8) (Primary Peg order), 11.190(b)(10) (Discretionary Peg order), and 11.190(b)(16) (Corporate Discretionary Peg order).

<sup>30</sup> See IEX Rule 11.190(b)(14).

11.190(b)(7) (“Discretionary Limit Order”), to specify that a displayed, non-routable, round or mixed lot limit or Discretionary Limit order may include a Post Only instruction, as defined in Proposed IEX Rule 11.190(b)(20).

Similarly, as described above, only certain order types are eligible to have a Take Now instruction. Therefore, IEX proposes to amend IEX Rules 11.190(a)(1), 11.190(b)(2), and 11.190(b)(7), to specify that non-displayed limit orders, non-displayed portions of reserve orders, and non-displayed Discretionary Limit orders will include a Trade Now instruction as defined in Proposed IEX Rule 11.190(b)(21). Because IEX proposes to allow Members to include a Trade Now instruction on pegged orders that could interact with a Post Only order, IEX is proposing to amend IEX Rules 11.190(b)(9), 11.190(b)(19), 11.190(b)(13), and 11.190(b)(18) to specify that a Member may include a Trade Now instruction with Midpoint Peg, Fixed Midpoint Peg, Offset Peg, and Market Peg orders, respectively.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>31</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>32</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to provide more flexibility and opportunities for Members to add displayed liquidity to the Exchange. As noted in the

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

<sup>32</sup> 15 U.S.C. 78f(b)(5).

Purpose section, Post Only orders, particularly when coupled with Trade Now functionality for some non-displayed orders, would provide fee determinism for Members seeking to add liquidity to the Exchange. This in turn is designed to encourage the posting of more displayed liquidity on the Exchange, and 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. 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.

IEX also believes it is consistent with the Act to adjust the price of Post Only orders as needed to post to the Order Book in compliance with Rule 610(d) of Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Member entering the Post Only order. Post Only orders are thus designed to allow Members to achieve fee determinism, while also providing displayed liquidity to the market and thereby contribute to public price discovery in a manner that is consistent with the Act.

IEX also believes that the proposal to give Members the option of having Post Only orders be subject to display price sliding or cancel promotes price discovery and provision of greater liquidity by facilitating the display of an order at its chosen limit price. Because this flexibility will further encourage Members to submit Post Only orders to IEX, which will in turn increase the displayed liquidity on the Exchange, IEX believes that 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.

Additionally, IEX believes that its proposed approach to inclusion of the Trade Now

instruction (as described in the Purpose section) is consistent with the purposes of the Act because it is designed to avoid internally locking the IEX Order Book by facilitating the execution of orders that would otherwise post, or remain posted, to the IEX Order Book at prices that would otherwise lock. Additionally, the Trade Now instruction would result in more executions of otherwise marketable orders, which benefits both parties to the transaction as well as the market as a whole by providing relevant price discovery. 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.

In addition, as noted in the Purpose section, every aspect of IEX's proposal is already available on at least one other equities exchange, with the exception that IEX will not allow a non-displayed, reserve, or displayed odd lot order to be a Post Only order.<sup>33</sup> As discussed in the Purpose section, that functionality is identical to functionality that was offered by the New York Stock Exchange until 2022. IEX notes that these minor differences are limited to the orders for which the functionality is available rather than the manner in which is applied. Because these minor differences from other exchanges' functionality are not based on competitive considerations but rather simply to provide for reasonably predictable outcomes in a manner consistent with IEX's system design, IEX believes that 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.

And IEX believes that the proposed conforming changes further the purposes of the Act because they provide greater clarity and consistency to the IEX Rule Book thereby reducing the

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<sup>33</sup> See supra notes 20, 22.

potential for confusion by market participants.

Finally, 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 other national securities exchanges, which 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.

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 incentivizing the posting of displayed liquidity on the Exchange. As noted above, the Exchange believes the proposed rule changes would generally align order handling on IEX with trading functionality on other equity exchanges and thus would promote competition among exchanges by offering member organizations similar functionality and order handling options available on other exchanges. The Exchange also believes that, to the extent the proposed changes would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhance market quality for all market participants. Moreover, competing exchanges have and can continue to adopt the same functionality contained in this proposal, subject to the SEC rule change process, as discussed in the Purpose and 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 submit Post Only orders and to include Trade Now instructions on eligible pegged 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 allowing Post Only orders incentivizes the provision of more displayed liquidity on IEX.

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)<sup>34</sup> of the Act and Rule 19b-4(f)(6)<sup>35</sup> 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. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>36</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4.<sup>37</sup> because it would not significantly affect the protection of investors or the

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<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b-4(f)(6).

<sup>36</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>37</sup> 17 CFR 240.19b-4(f)(6).

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 functionality currently offered by many other equities exchanges, 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. Accordingly, IEX has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>38</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>39</sup>

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).<sup>40</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-IEX-2023-13

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<sup>38</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>39</sup> 17 CFR 240.19b-4(f)(6).

<sup>40</sup> 15 U.S.C. 78s(b)(2)(B).

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-2023-13. 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 (<https://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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office 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-2023-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

authority.<sup>41</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>41</sup> 17 CFR 200.30-3(a)(12).

## Exhibit 5 – Text of Proposed Rule Change

Proposed new language is underlined; proposed deletions are in brackets.

## INVESTORS EXCHANGE RULE BOOK

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## Rule 11.190. Orders and Modifiers

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***(a) General Order Types.***

- (1) Limit Order. An order to buy or sell a stated amount of a security at a specified price (“limit price”) or better. A “marketable” limit order is a limit order to buy (sell) at or above (below) the lowest (highest) Protected Offer (Bid) for the security. A limit order:

(A)-(G) No change.

(H) May include a Trade Now instruction, as defined in IEX Rule 11.190(b)(21) below, if the order is non-displayed, as defined in IEX Rule 11.190(b)(3) below.

- (2)-(4) No change.

***(b) Order Parameters.***

- (1) Displayed Order. An order with its full quantity displayed. Limit orders, other than those marked IOC or FOK, may have their unexecuted portions posted on the Order Book. All such orders are considered fully displayed by the System, except those orders marked otherwise by Users, or prohibited from being displayed by the Rules. Displayed orders and displayed portions of orders may be referred to as “quotations” of the Exchange. All Exchange quotations are firm, which means they are automatically executable for their displayed size in the System. All Exchange quotations compete for priority as displayed orders pursuant to IEX Rule 11.220. A displayed order:

(A)-(I) No change.

(J) A displayed, non-routable, round or mixed lot limit order may include a Post Only instruction, as defined in paragraph (20) below.

- (2) Reserve Order. An order with a portion of the quantity displayed (“display

quantity”) and with a non-displayed reserve portion of the quantity (“reserve quantity”). The User instructed display quantity may be a fixed or random number of shares; and an odd, mixed, or round lot quantity. An incoming reserve order is first processed as a single order of its full, unexecuted share size as it checks the Order Book for eligible resting contra interest. If it is not fully executed, it will be posted to the Order Book and effectively be treated as two discrete orders: one displayed for the User instructed fixed or random replenishments quantity (“displayed portion”), and one non-displayed for all other remaining, unexecuted shares (“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, since the non-displayed portion is subject to non-displayed price sliding while the displayed portion is subject to display-price sliding. The User must specify a base display quantity (“Max Floor”) and may enter a replenishment value as described in subparagraph (2)(A) of this Rule 11.190(b). If the reserve order has a Max Floor of at least one round lot and 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 replenished from the non-displayed portion pursuant to subparagraph (2)(A) of this Rule 11.190(b) (the “replenishment process”) or by the entire reserve quantity, if the total number of unexecuted shares in the order is smaller than the replenishment quantity determined by the replenishment process. If a reserve order has a Max Floor that is less than a round lot, and the displayed portion of the reserve order is decremented to zero shares, the displayed portion of the reserve order shall be replenished from the non-displayed portion pursuant to the replenishment process, or by the entire reserve quantity, if the total number of unexecuted shares in the order is smaller than replenishment quantity determined by the replenishment process. Each time the displayed portion of the order is replenished 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 replenishment process. A reserve order has the following attributes:

(A)-(I) No change.

(J) Non-displayed portions of reserve orders will include a Trade Now instruction, as defined in paragraph (21) below.

(3)-(6) No change.

(7) Discretionary Limit Order. A displayed, nondisplayed, or partially 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, except under the following circumstances:

(A)-(E) No change.

(F) Once the price of a Discretionary 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 or the displayed portion of a reserve order) at the adjusted price, unless subject to another automatic adjustment pursuant to subparagraphs (C) – (D) above, or the optional re-price functionality described in subparagraph (E), above. When the price of a Discretionary Limit order is adjusted, the order will receive a new time priority. If multiple Discretionary Limit orders are adjusted at the same time, their relative time priority will be maintained. A Discretionary Limit order:

(i)-(ix) No change.

(x) A displayed round or mixed lot Discretionary Limit order may include a Post Only instruction, as defined in paragraph (20) below.

(ix) A non-displayed Discretionary Limit order will include a Trade Now instruction, as defined in paragraph (21) below.

(8) No change.

(9) Midpoint Peg Order. A pegged order that upon entry and when posting to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the Midpoint Price or the order's limit price, if any. While resting on the Order Book, the order is automatically adjusted by the System in response to changes in the midpoint of the NBBO as allowed by the order's limit price, if any. A midpoint peg order:

(A)-(J) No change.

(K) May include a Trade Now instruction, as defined in paragraph (21) below.

(10)-(12) No change.

(13) Offset Peg Order. A pegged order that upon entry and when posting to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the primary quote (i.e. the NBB for buy orders and NBO for sell orders) plus or minus an offset amount or the order's limit price, if any. While resting on the Order Book, (i) a buy order is automatically adjusted by the System in response to the changes in the NBB plus or minus the offset amount up to the order's limit price, if any; and (ii) a sell order is automatically adjusted by the System in response to changes in the NBO plus or

minus the offset amount down to the order's limit price, if any. An Offset Peg order:

(A)-(L) No change.

(M) May include a Trade Now instruction, as defined in paragraph (21) below.

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(14)-(17) No change.

(18) Market Peg Order. A pegged order that upon entry and when posting to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the contra-side primary quote (i.e., the NBO for buy orders and NBB for sell orders) minus (plus) an offset amount for buy (sell) orders, if any, or the order's limit price, if any. While resting on the Order Book, the order is automatically adjusted by the System in response to the changes in the NBO (NBB) for buy (sell) orders, minus (plus) an offset amount for buy (sell) orders, if any, up (down) to the order's limit price, if any. A Market Peg order:

(A)-(L) No change.

(M) May include a Trade Now instruction, as defined in paragraph (21) below.

(19) Fixed Midpoint Peg Order. A pegged order that upon entry and when posting to the Order Book, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of the Midpoint Price or the order's limit price, if any. However, an incoming fixed midpoint peg order will be canceled by the System if it is received when there is no NBB or NBO, or the NBBO is crossed. The price of a fixed midpoint peg order will not thereafter be repriced based on changes to the NBBO. However, a resting fixed midpoint peg order will be canceled back to the User if any of the following conditions are met:

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A fixed midpoint peg order:

(A)-(J) No change.

(K) May include a Trade Now instruction, as defined in paragraph (21) below.

(20) Post Only Order. A displayed, non-routable order that will not remove liquidity from the IEX Order Book, other than as described below.

(A) A Post Only order will remove contra-side liquidity from the IEX Order Book if the order is an order to buy or sell a security priced below \$1.00.

- (B) A Post Only order will remove contra-side liquidity from the IEX Order Book if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the IEX Order Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.
- (C) If not designated by the User to cancel, any untraded quantity of a Post Only order will be subject to display-price sliding as set forth in IEX Rule 11.190(h)(1).
- (D) Post Only orders must be a round or mixed lot sized order.
- (E) Post Only orders must have a TIF of DAY, GTX, SYS, or GTT.
- (F) Post Only orders may not be an ISO, as defined in paragraph (12) above.
- (21) Trade Now. An instruction on an order resting on the IEX Order Book that, when locked by an incoming Post Only order that does not remove liquidity pursuant to paragraph (20) of this Rule, causes such order to be converted to an executable order that removes liquidity against such incoming order.

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