[redacted]

June 29, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-IEX-2021-06

Dear Ms. Countryman:

Investors Exchange LLC ("IEX") appreciates the opportunity to respond to two comment letters from a commenter who self-identified as an individual investor [1] concerning IEX's proposal to enhance IEX's Retail Price Improvement Program ("Retail Program").[2] The purpose of the proposal, as described in detail in the referenced rule filing pending with the Securities and Exchange Commission ("SEC" or the "Commission"), is to enhance IEX's Retail Program for the benefit of retail investors. Specifically, the Exchange proposes to make four changes: (i) revise the definition of Retail order[3] in IEX Rule 11.190(b)(15) to apply only to the trading interest of a natural person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s);[4] (ii) provide Order

[1] Letter from Mike Ianni ("Comment Letter 1"), dated May 5, 2021 available at https://www.sec.gov/comments/sr-iex-2021-06/sriex202106-8762194-237501.pdf; and letter from Mike Ianni ("Comment Letter 2") dated May 30, 2021 available at https://www.sec.gov/comments/sr-iex-2021-06/sriex202106-8932251-245446.pdf.
[2] *See* Securities Exchange Act Release No. 91523 (April 9, 2021), 86 FR 19912 (April 15, 2021) ("Retail Program Filing").
[3] See IEX Rules 11.190(b)(15) and 11.232(a)(2).
[4] The existing restrictions applicable to a Retail order, that it must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology, will continue to apply.

Book[5] priority to Retail Liquidity Provider ("RLP") orders[6] at the Midpoint Price[7] ahead of other non-displayed orders priced to execute at the Midpoint Price; (iii) disseminate a "Retail Liquidity Identifier" through the Exchange's proprietary market data feeds and the appropriate securities information processor ("SIP") when RLP order interest aggregated to form at least one round lot for a particular security is available in the System,[8] provided that the RLP order interest, which is resting at the Midpoint Price, is priced at least $0.001 better than the NBB[9] or NBO[10]; and (iv) amend the definition of RLP orders so such orders can only be midpoint peg orders,[11] cannot be Discretionary Peg orders,[12] and cannot include a minimum quantity restriction.[13]

The proposed changes are designed to enhance IEX's ability to compete for retail order flow and retail liquidity. Specifically, and as discussed in the referenced rule filing, the proposal is designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement by incentivizing market participants to compete to provide such price improvement.

Summary of Comments

The commenter focuses on one aspect of the rule filing –the proposal to revise the definition of a Retail order to apply only to the trading interest of a natural person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). Based on a careful reading of both comment letters, we understand the commenter's objections to be as follows. First, he believes

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[5] See IEX Rule 1.160(p).
[6] See IEX Rules 11.190(b)(14) and 11.232(a)(3).
[7] The term "Midpoint Price" means the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" means the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).
[8] See IEX Rule 1.160(nn).
[9] See IEX Rule 1.160(u).
[10] See IEX Rule 1.160(u).
[11] See IEX Rule 11.190(b)(9)
[12] See IEX Rule 11.190(b)(10)
[13] See IEX Rule 11.190(b)(11)

that the use of an average order per day limitation on options exchanges has led to a widening of bid-ask spreads on those markets. Next, he extrapolates from this conclusion to assert that applying a 390 order per day limitation to equities exchanges could create "a two-tiered marketplace that could lead to higher bid-ask spreads in the market and lower 'fill rates' for large long-term investors." Further, he questions IEX's rationale for the proposal and, based on an incorrect assumption that IEX would identify Retail orders in its market data, he suggests that IEX would benefit high-speed traders by pooling "unsophisticated orders together" so that high frequency trading firms can trade against them. In Comment Letter 2, the commenter discusses enforcement issues with respect to the 390 order per day limitation by options exchanges, which he asserts also exist in IEX's proposal. He also again states that use of an average order per day limitation on options exchanges has led to a widening of bid-ask spreads, and questions IEX's rationale for the proposal.[14]

Response

With respect to the commenter's concerns about existing options market practices, we respectfully believe that these concerns regardless of their merits, cannot be reasonably extrapolated to the use of retail liquidity provider programs for equity exchanges, or to IEX's Retail Program in particular. We also believe that the commenter may be misinterpreting certain aspects of how the IEX Retail Program would operate, as well as its underlying purpose. Further, we think it is important to account for existing precedent and practice involving existing retail liquidity programs that have been approved by the Commission.

First, IEX expresses no view on the optimal bid-ask spreads for options quotes. We note simply that there are likely many factors affecting those spreads over the period since 2009 that was identified by the commenter, including the number of options exchanges, relative liquidity of different types of options contracts, and changes in the number and options classes and series. We also think it is speculative

[14] In Comment Letter 2, the commenter also expresses his views on several tangential market structure issues and broker practices that IEX does not believe are relevant to its proposal.

to ascribe, without more evidence, a causal link between the adoption of an average per day order test to identify non-professional orders and trends in options spreads over that period. Moreover, while the commenter expresses concern about the impact on resting liquidity in connection with identifying non-professional resting orders, under the Retail Program Retail orders can only take liquidity while the commenter focuses on the impact of the 390 order per day threshold on options orders seeking to provide liquidity. Because IEX's proposal focuses on defining retail orders for purposes of taking liquidity on an equities exchange, IEX believes that the commenter's concerns are not at issue in our proposal. Retail orders on IEX are never displayed and only take liquidity, and therefore they do not contribute to IEX's quote or bid-ask spread. Moreover, Retail orders are eligible to trade only with resting non-displayed orders priced at the midpoint and displayed (but unprotected) odd-lot orders priced better than the midpoint but less aggressive than IEX's protected quote. Thus, whether or not a retail customer triggers the 390 order per day limitation would have no impact on IEX's bid-ask quote width.

Second, there are significant structural differences between equities and options markets. In general, all options orders must be sent to an exchange while approximately 50% of equities transactions (and a significant amount of retail volume) occur on off-exchange venues. As discussed in the rule filing, IEX's proposal seeks to promote IEX's ability to compete for retail order flow, both from other exchanges and off-exchange venues, by enhancing IEX's Retail Program. The proposal is designed to provide meaningful price improvement to retail customers, thereby incentivizing them to submit orders to IEX. And in turn, because market participants would know that there are retail customers submitting liquidity taking orders to IEX, they would in turn be incentivized to add liquidity to IEX knowing it will be able to interact with real retail customer interest.

Third, the commenter is mistaken in suggesting that Retail orders would be identified on IEX market data. In fact, IEX's Retail orders can only take resting liquidity, which means they will never post to IEX's order book nor will they appear as resting quotes on IEX's data feeds or be flagged as Retail orders. Instead, as noted above, the orders of RLPs will be identified by a Retail Liquidity Identifier when RLP interest equaling at least one round lot for a security is available.

IEX notes that the 390 orders per day restriction represents an order entered each minute during regular trading hours – from 9:30 a.m. eastern time to 4:00 p.m. eastern time – which IEX believes is a reasonable and not overly restrictive limitation in that it contemplates active trading but not at the level of a professional trader.[15] IEX believes that limiting the pool of customers eligible to enter Retail orders, as proposed, will incentivize additional resting liquidity seeking to trade against such Retail orders (and provide price improvement) because of their non-professional characteristics. In addition, IEX does not express any views on how the options exchanges have enforced their 390 orders per day limitation but notes that it has a robust regulatory program in place to monitor and enforce compliance with its rules.

Finally, with respect to the commenter's concern that the proposal could create a "two-tiered marketplace" for retail order flow, IEX notes that the existing equity market structure today is in substance already "two-tiered" in that in that the preponderance of retail orders are executed on non-exchange venues. As discussed above, the proposal is designed to enhance IEX's ability to compete for retail order flow in a manner designed to provide meaningful price improvement to retail customers. Moreover, use of the 390 order per day threshold is already established on equity exchanges. Since 2019, Cboe EDGX Exchange, Inc. ("EDGX") has applied the 390 order per day threshold when determining which retail customers' orders should be given execution priority.[16] More generally, retail programs providing benefits to retail investors have been approved by the Commission and in place at a number of

[15] As noted in the rule filing, an analysis of orders sent to IEX by Members and customers conducting a proprietary trading business indicates that many of such Members and customers typically send millions of orders per day and even the less active send thousands of orders per day.
[16] *See* Securities Exchange Act Release No. 87200 (October 2, 2019), 84 FR 53788 (October 8, 2019) (SR-CboeEDGX-2019-012) (order approving EDGX Retail Priority Orders).

equities exchanges for almost ten years, reflecting the policy view that it is appropriate for exchanges to seek to provide trading benefits to such investors.

Conclusion

IEX believes that the commenter's concerns about rules and practices in the options markets are misdirected in the context of IEX's Retail Program. IEX believes that that the changes proposed will provide an improved opportunity for Retail investors to receive substantial benefits in the form of price improvement and are fully consistent with precedent and the standards for approval under the Act.

Sincerely,

Claudia Crowley