



July 7, 2021

Via E-Mail

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

Re: SR-IEX-2021-06

Dear Ms. Countryman:

Investors Exchange LLC filed the attached Partial Amendment No. 1 to the above referenced filing on the date indicated therein.

Sincerely,

*Claudia Crowley*

Enclosure: Partial Amendment No. 1 to SR-IEX-2021-06

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 20 SECURITIES AND EXCHANGE COMMISSION File No.\* SR - 2021 - \* 06  
WASHINGTON, D.C. 20549  
Form 19b-4 Amendment No. (req. for Amendments \*) 1

Filing by Investors' Exchange LLC  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

**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 \*).

**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 \***  **Last Name \***

**Title \***

**E-mail \***

**Telephone \***  **Fax**

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

**Date**  **Chief Regulatory Officer**

**By**

(Name \*)

**Claudia Crowley,**

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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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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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 Advance 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, security-based swap submission, or advance notice 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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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.

**Partial Amendment No. 1 to SR-IEX-2021-06**

Investors Exchange LLC (“IEX” or the “Exchange”) is filing this Partial Amendment No. 1 to SR-IEX-2021-06, which was originally filed with the Securities and Exchange Commission (“SEC” or “Commission”) on April 1, 2021, and is available on the Exchange’s public website.<sup>1</sup> The Commission published the proposed rule change for comment in the Federal Register on April 9, 2021<sup>2</sup> and on May 26, 2021, extended the review period to July 14, 2021.<sup>3</sup> The Commission received two comment letters in response from the same commenter.<sup>4</sup> IEX submitted by separate letter its response to comments on the proposed rule change on June 29, 2021.<sup>5</sup>

With this Partial Amendment No. 1, IEX is including Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1 and Exhibit 5, which reflects all proposed changes to the current rule text, as modified by this Partial Amendment No. 1.

Pursuant to SR-IEX-2021-06, the Exchange proposed rule changes to (i) revise the definition of Retail order<sup>6</sup> 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

<sup>1</sup> See Securities Exchange Act Release No. 91523 (April 9, 2021), 86 FR 19912 (April 15, 2021), available at [www.iextrading.com/regulation/rule-filings](http://www.iextrading.com/regulation/rule-filings).

<sup>2</sup> *Id.*

<sup>3</sup> See Securities Exchange Act Release No. 92029 (May 26, 2021), 86 FR 29608 (June 2, 2021).

<sup>4</sup> See letter from Mike Ianni, dated May 5, 2021, available at <https://www.sec.gov/comments/sr-iex-2021-06/sriex202106-8762194-237501.pdf>. See also letter from Mike Ianni, dated May 30, 2021, available at <https://www.sec.gov/comments/sr-iex-2021-06/sriex202106-8932251-245446.pdf>.

<sup>5</sup> See letter from Claudia Crowley, Chief Regulatory Officer, IEX, dated June 29, 2021, available at <https://www.sec.gov/comments/sr-iex-2021-06/sriex202106-8993847-245965.pdf>.

<sup>6</sup> See IEX Rules 11.190(b)(15) and 11.232(a)(2).

average during a calendar month for its own beneficial account(s);<sup>7</sup> (ii) provide Order Book<sup>8</sup> priority to Retail Liquidity Provider (“RLP”) orders<sup>9</sup> at the Midpoint Price<sup>10</sup> 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,<sup>11</sup> provided that the RLP order interest is resting at the Midpoint Price and is priced at least \$0.001 better than the NBB<sup>12</sup> or NBO<sup>13</sup> (“RLP Interest”); and (iv) amend the definition of RLP orders so such orders can only be midpoint peg orders,<sup>14</sup> cannot be Discretionary Peg orders,<sup>15</sup> and cannot include a minimum quantity restriction.<sup>16</sup> The proposed changes are designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement on the Exchange by incentivizing market participants to compete to provide such price improvement.

This Partial Amendment No. 1 proposes to modify the proposed Order Book

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<sup>7</sup> 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.

<sup>8</sup> See IEX Rule 1.160(p).

<sup>9</sup> See IEX Rules 11.190(b)(14) and 11.232(a)(3).

<sup>10</sup> 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).

<sup>11</sup> See IEX Rule 1.160(nn).

<sup>12</sup> See IEX Rule 1.160(u).

<sup>13</sup> Id.

<sup>14</sup> See IEX Rule 11.190(b)(9).

<sup>15</sup> See IEX Rule 11.190(b)(10).

<sup>16</sup> See IEX Rule 11.190(b)(11).

priority for RLP orders to provide that such orders are ranked in time priority with non-displayed orders priced to execute at the Midpoint Price rather than ahead of such orders as originally proposed. The Exchange believes that this proposed change will provide appropriate incentives for the entry of RLP orders and concomitant provision of price improvement to Retail orders.

#### Proposed Amendments

Currently, IEX Rule 11.232(e)(3)(A)(iv) provides that RLP orders, which are currently a type of Discretionary Peg order, are prioritized after all non-displayed orders priced to trade at the Midpoint Price. IEX originally proposed that RLP orders, which would now be midpoint peg orders, would have higher priority than non-displayed orders priced to trade at the Midpoint Price in order to provide additional incentives for the entry of RLP orders and concomitant provision of price improvement to Retail orders. However, based on additional analysis of the potential benefits and burdens of RLP and non-displayed orders priced to trade at the Midpoint Price, IEX determined that RLP orders should be ranked in time priority with such other orders, consistent with the Exchange's regular price time execution priority.<sup>17</sup>

Accordingly, IEX proposes to amend the first paragraph of the Purpose section beginning on page 4 in the Form 19b-4 Information and reproduced beginning on page 25 of the Exhibit 1 as follows by deleting bracketed text and adding underlined text (footnotes omitted):

The purpose of the proposed rule change is to enhance the Exchange's Retail Price Improvement Program for the benefit of retail investors. Specifically, the Exchange

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<sup>17</sup> See IEX Rule 11.220(a)(1).

proposes to make the following four changes: (i) revise the definition of Retail order 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); (ii) provide [~~Order Book priority to ]that Retail Liquidity Provider (“RLP”) orders have Order Book priority at the Midpoint Price [ahead of]in time priority with~~ 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, provided that the RLP order interest is resting at the Midpoint Price and is priced at least \$0.001 better than the NBB or NBO; and (iv) amend the definition of RLP orders so such orders can only be midpoint peg orders, cannot be Discretionary Peg orders, and cannot include a minimum quantity restriction. The proposed changes are 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.

The Exchange also proposes to amend the language in the first full paragraph beginning on page 12 in the Form 19b-4 Information under the heading “RLP Order Book Priority” and reproduced beginning on page 33 of the Exhibit 1 as follows by deleting bracketed text and adding underlined text (footnote reference numbers align with footnote numbering in the 19b-4 Information as initially filed; conforming changes are to be made to footnote numbering in Exhibit 1):

IEX proposes ~~that [to provide Order Book priority to ]~~RLP orders [ahead of]have Order Book priority at the Midpoint Price in time priority with other non-displayed orders priced to execute at the Midpoint Price. Currently, IEX Rule 11.232(e)(3)(A)(iv) provides that RLP orders are prioritized after all other non-displayed orders priced to trade at the Midpoint Price. This approach was adopted by IEX originally because RLP orders were a new order type and are only eligible to trade against Retail orders. However, IEX now believes that RLP orders should have [~~higher~~]equal priority [~~than~~]to other non-displayed orders priced to trade at the Midpoint Price in order to provide additional incentives for the entry of RLP orders and concomitant provision of price improvement to Retail orders. [The Exchange notes that other exchanges that offer retail programs enable retail liquidity providing orders that provide immaterial sub-penny price improvement to achieve queue priority by providing a retail order type that trades first

with retail liquidity providing orders before trading with other similarly priced orders.<sup>33]</sup> As proposed, RLP orders and non-displayed orders priced to execute at the Midpoint Price would be ranked in price time priority, and it is consistent with IEX's existing priority rules for such orders to be subject to Order Book priority based on time of order entry whereby an order with an earlier timestamp is eligible for execution before an order with a later timestamp.<sup>33</sup> While RLP orders have the benefit of being able to trade only against Retail orders, they are subject to display of the order's symbol, side, and effective price<sup>34</sup> through the Retail Liquidity Identifier.<sup>35</sup> The willingness to display these characteristics affects the risks to liquidity providers in that it provides a market-wide signal indicating the presence of buy or sell interest of a minimum size at the Midpoint Price in the security in question. Non-displayed orders priced to execute at the Midpoint Price would, as proposed, have the benefit of being able to specify a minimum quantity of shares for execution<sup>36</sup> and would not be subject to display of the order's symbol, side, and effective price through the Retail Liquidity Identifier. At the same time, these non-displayed orders are required to execute against all incoming orders priced to execute at the Midpoint Price, subject to any minimum quantity specified by those non-displayed orders.

IEX believes that these differing order type risks and benefits do not warrant the existing lower priority for RLP orders. Moreover, as proposed, RLP orders must be midpoint peg orders. In contrast to Discretionary Peg orders, midpoint peg orders are more deterministic and can only trade at the Midpoint Price, so IEX believes for this reason also that it is appropriate to rank RLP orders in time priority with midpoint peg and other nondisplayed orders priced to execute at the Midpoint Price. Ranking RLP orders in price time priority with other orders priced to execute at the Midpoint Price is designed to enhance IEX's ability to compete for retail order flow in a manner designed to provide substantial price improvement to retail customers beyond that available to them through other exchange retail liquidity programs. Specifically, IEX seeks to provide more effective incentives for the entry of contra-side liquidity seeking to trade against

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[<sup>33</sup> See, e.g., Arca Rule 7.44-E(k) (Retail orders trade first with retail price improvement orders (akin to IEX's RLP orders), and then with all other orders to sell (buy) with a working price below (above) the NBO (NBB)); See also BYX Rule 11.24(f); and Nasdaq BX, Inc. ("Nasdaq BX") Rule 4702(b)(6)(A).]

<sup>33</sup> See IEX Rule 11.220(a)(1).

<sup>34</sup> RLP orders can only be priced at the Midpoint Price. Therefore, by disseminating whether there is available RLP interest, the Retail Liquidity Identifier would include an effective price but not an explicit price in that the Midpoint Price will vary based on changes to the NBBO.

<sup>35</sup> The willingness to display these characteristics affects the risks to liquidity providers by indicating the presence of buy or sell interest of a minimum size at the Midpoint Price in the security in question.

<sup>36</sup> Use of a minimum quantity of shares for execution is generally used by market participants to avoid executions by counterparties seeking to identify the presence of a large resting order, or for other reasons.



Retail orders at the Midpoint Price and thereby incentivize brokers to route more Retail orders to IEX.

Moreover, IEX believes that the proposed change is consistent with the manner in which Arca applies its priority rules to retail liquidity providing orders (referred to as “Retail Price Improvement Orders”). While Arca enables only retail liquidity providing orders to provide immaterial sub-penny price improvement to achieve queue priority over nondisplayed orders,<sup>37</sup> its rules also provide that when a retail liquidity providing order (referred to as a “Retail Price Improvement Order”) is at the same price as a nondisplayed order the orders will be ranked together. Specifically, Arca Rule 7.44-E(1) provides that “Retail Price Improvement Orders in the same security will be ranked together with all other interest ranked as Priority 3 – Non-Display Orders.”<sup>38</sup>

Thus, as proposed, IEX Rule 11.232(e)(3)(A) would be amended to provide that a Retail order to buy (sell) shall execute upon entry against sell (buy) orders resting on the Order Book in the following order:

- (i) displayed sell (buy) orders at the NBO (NBB) during a locked or crossed market;
- (ii) displayed sell (buy) odd lot orders priced to trade between the NBB (NBO) and the MidPoint Price; and
- (iii) Retail Liquidity Provider orders and nondisplayed orders priced to trade at the Midpoint Price[; and

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<sup>37</sup> See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEArca-2019-63).

<sup>38</sup> See also, NYSE Rule 7.44(l) which contains similar provisions. IEX also notes that NYSE Rule 107C(l) previously provided that its Retail Price Improvement orders would receive priority over Mid-Point Passive Liquidity orders at the midpoint of the Protected Best Bid and Offer further supporting that existing precedent does not require that IEX continue to prioritize RLP orders after nondisplayed orders priced to execute at the Midpoint Price. See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754, 5758 (February 22, 2019). In addition, Nasdaq BX, Inc. (“Nasdaq BX”) Rule 4702(b)(6)(A) provides in relevant part that “[u]pon entry, a Type 2 – Retail Order will first attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-2 Retail Order and (ii) at least \$0.001 better than the NBBO and will then attempt to execute any any other Order on the Exchange Book with a price that is equal to or better than the price of the Type-2 Retail Order....” And Cboe BYX Exchange, Inc. (“BYX”) Rule 11.24(f) provides in relevant part that “[a] Type 2-designated Retail Order will interact first with available contra-side RPI Orders and other price improving liquidity.” While not explicit, IEX believes that the Nasdaq BX and BYX rules indicate that retail liquidity providing orders on those exchanges are not ranked after other orders at the same price since the rules refer to execution of RPI orders alongside such other orders and the reference to RPI orders is first in the relevant sentence in each exchange’s rule text.

(iv) nondisplayed orders priced to trade at the Midpoint Price].

The Exchange also proposes to amend the numbering of footnotes 34 – 47 in the 19b-4 Information as initially filed (and conforming changes are to be made to footnote numbering in Exhibit 1) to reflect the addition of new footnotes 34 -38 so that each such footnote's reference number increases by five resulting in renumbering to footnote reference numbers 39 – 52.

Additionally, the Exchange proposes to amend the language of footnote 36 (which would be renumbered to footnote 41 as noted above) on page 14 in Form 19b-4 Information in the Purpose section and reproduced in footnote 39 (which would be renumbered to footnote 44 as noted above) on page 35 of the Exhibit 1 as follows by deleting bracketed text and adding underlined text:

Concurrently with this Partial Amendment No. 1 [T]the Exchange [plans to] will submit a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS (“Quote Rule”) based on the Exchange’s and its Members’ participation in the Retail Program.

The Exchange also proposes to amend the language in the second full paragraph on page 16 in the Form 19b-4 Information in the Purpose section under the heading “RLP order type definition” and reproduced on page 37 of the Exhibit 1 as follows by deleting bracketed text and adding underlined text (footnotes omitted):

In connection with the proposed changes, described above, to disseminate a Retail Liquidity Identifier and provide enhanced priority to RLP orders, IEX believes that it is appropriate that RLP orders be midpoint peg orders. Specifically, IEX notes that midpoint peg orders post on the Order Book at the Midpoint Price while Discretionary Peg orders post on the Order Book at the less aggressive of the order’s limit price or a price one minimum price variation less aggressive than the NBB or NBO (as applicable) and exercise price discretion to the Midpoint Price except during periods of quote instability when Discretionary Peg orders are not permitted to trade at a price more aggressive than their resting price. Thus, disseminating a Retail Liquidity Identifier of

RLP Interest at the Midpoint Price would be unnecessarily complicated if RLP orders were to continue to be Discretionary Peg orders since they do not explicitly post to the Order Book at the Midpoint Price. Additionally, IEX's rules provide that Discretionary Peg orders are prioritized behind any non-displayed interest at the discretionary price (in this case the Midpoint Price), so it would be inconsistent with the priority rules for RLP Discretionary Peg orders to have Order Book priority at the Midpoint Price in time priority [over] with non-RLP midpoint peg orders that do rest at the Midpoint Price.

The Exchange also proposes to amend the language in the second full paragraph on page 20 in the Form 19b-4 Information in the Statutory Basis section and reproduced on page 41 of the Exhibit 1 as follows by deleting bracketed text and adding underlined text:

The Exchange also believes that [providing Order Book priority to] ranking RLP orders [ahead of] in price time priority with other non-displayed orders priced to execute at the Midpoint Price is consistent with the protection of investors and the public interest because it is designed to provide additional incentives for the entry of RLP orders and concomitant provision of price improvement to Retail orders, as discussed in the Purpose section. The Exchange also notes that Retail orders will [still ]be able to execute against other orders priced to execute at the Midpoint Price in time priority so the proposed change[s] is not creating a segmented liquidity pool, and any Member can enter an RLP order. As discussed in the Purpose section, RLP orders and non-displayed orders priced to execute at the Midpoint Price would be at equal price priority, and it is consistent with IEX's existing priority rules for such orders to be subject to Order Book priority based on time of order entry whereby an order with an earlier timestamp is eligible for execution before an order with a later timestamp. Moreover, and also as discussed in the Purpose section, IEX believes that the differing order type risks and benefits do not warrant the existing lower priority for RLP orders. Providing Order Book priority to RLP orders along with other orders priced to execute at the Midpoint Price is designed to enhance IEX's ability to compete for retail order flow in a manner designed to provide substantial price improvement to retail customers beyond that available to them through other exchange retail liquidity programs. Additionally, and also as discussed in the Purpose section, IEX believes that this proposed approach is consistent with the manner in which another exchange that offers a retail program prioritizes retail liquidity providing orders when at the same price as nondisplayed orders. Consequently, IEX believes that providing Order Book priority to RLP orders in equal time priority with non-displayed orders priced to execute at the Midpoint Price is not unfairly discriminatory nor does it raise any new or novel issues not already considered by the Commission. [Additionally, the Exchange believes that providing Order Book priority to RLP orders is not unfairly discriminatory since any Member can enter an RLP order. Further, as discussed in the Purpose section, this proposed change is consistent with the approach of several other

exchanges that provide immaterial sub-penny price improvement to achieve queue priority by providing a retail order type that trades first with retail liquidity providing orders before trading with other similarly priced orders.<sup>48]</sup>

The Exchange additionally proposes to amend the numbering of footnote 49 in the 19b-4 Information as initially filed (and conforming changes are to be made to footnote numbering in Exhibit 1) so that its footnote reference number is 53 to reflect the deletion of footnote 48 and renumbering of footnotes 34 – 47 as noted above.

The Exchange also proposes to amend the language in the third full paragraph on page 22 in the Form 19b-4 Information in the Burden on Competition section and reproduced on page 43 of the Exhibit 1 as follows by deleting bracketed text and adding underlined text:

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 enter an RLP order, and all Members would be eligible to execute against a Retail order in price time priority in accordance with existing IEX rules. Moreover, the proposed rule change would provide potential benefits to all Members to the extent it is successful in attracting additional Retail orders.[While orders submitted by some Members will be treated differently, as described in the Purpose section, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders. Further, any Member can enter an RLP order.]

IEX believes that there is good cause for the Commission to approve the proposed rule change, as modified by Partial Amendment No. 1 prior to the 30th day after the date of publication of notice of the filing of Partial Amendment No. 1 in the Federal Register. As discussed above, the change proposed by Partial Amendment No. 1 merely conforms the priority of RLP orders to be fully consistent with IEX's existing priority rules, whereby an order with an earlier timestamp is eligible for execution before an equally-

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[<sup>48</sup> See supra note 38.]

priced order with a later timestamp. Moreover, as discussed in the Statutory Basis section, IEX believes that the revisions to the proposed rule change pursuant to Partial Amendment No. 1 do not raise any new or novel issues not already considered by the Commission. Accordingly, IEX believes that accelerated approval of such proposed change is consistent with the protection of investors and the public interest.

Exhibit 4 – Text of Proposed Rule Change

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language is underlined; proposed deletions are in brackets.

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Rule 11.190. Orders and Modifiers

(a) No Change.

(b) (1)-(13) No Change.

(14) Retail Liquidity Provider Order. Midpoint Peg order that may not be a MQTY, as defined in paragraph (11) above, and is only eligible to execute against Retail orders through the execution process described in Rule 11.232(e).

(15) Retail Order. An order submitted by a Retail Member Organization (as defined in Rule 11.232) and designated with a “Retail order” modifier. A Retail order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. A Retail order 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 (a “retail customer”). An order from a retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s).

...Supplementary Material...

.01 Retail Orders. A “Retail order”, as defined in Rule 11.190(b)(15), may only be entered on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). For purposes of counting orders to determine whether the 390 equity order per day on average threshold has been reached:

(a) “Parent”/“Child” Orders. A “parent” order that is broken into multiple “child” orders by a broker or dealer, or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer, counts as one order even if the “child” orders are routed across multiple

exchanges.

(b) Cancel/Replace. Any order that cancels and replaces an existing order counts as a separate order; except that an order that cancels and replaces any “child” order resulting from a “parent” order that is broken into multiple “child” orders, does not count as a new order.

.02 “Retail Member Organizations”, as defined in Rule 11.232(a)(1), that enter Retail orders must have reasonable policies and procedures in place to ensure that such orders are appropriately represented on the Exchange. Such policies and procedures should provide for a review of retail customers’ activity on at least a quarterly basis.

(a) Retail orders for any retail customer that had an average of more than 390 equity orders per day during any month of a calendar quarter are not eligible to be entered as Retail orders for the next calendar quarter. Retail Member Organizations must conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter.

(b) If during a quarter the Exchange identifies a retail customer for which orders are being represented as Retail orders but that has averaged more than 390 equity orders per day during a month, the Exchange will notify the Retail Member Organization, and the Retail Member Organization will be required to change the manner in which it is representing the retail customer’s orders within five business days.

(16) No Changes.

(c)–(h) No Changes.

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#### Rule 11.232. Retail Price Improvement Program

(a) – (d) No Change.

(e) Priority and Order Execution.

(1) Retail Liquidity Provider orders in the same security shall be ranked and allocated according to price then time of entry into the System.

(2) Retail orders shall seek to execute upon entry into the System at the Midpoint Price, except that a Retail order to buy (sell) may also seek to execute against a displayed odd lot to sell (buy) priced at or between the NBB (NBO) and the Midpoint Price.

(3) Retail orders shall execute against orders resting on the Order Book in price/time priority in accordance with IEX Rule 11.230 subject to the following:

(A) A Retail order to buy (sell) shall execute upon entry against sell (buy) orders resting on the Order Book in the following order:

- (i) displayed sell (buy) orders at the NBO (NBB) during a locked or crossed market;
- (ii) displayed sell (buy) odd lot orders priced to trade between the NBB (NBO) and the MidPoint Price; and
- (iii) Retail Liquidity Provider orders and nondisplayed orders priced to trade at the Midpoint Price[; and
- (iv) nondisplayed orders priced to trade at the Midpoint Price].

Examples of priority and order allocation are as follows:

NBBO for security ABC is \$10.00 — \$10.10. It is not a period of quote instability as defined in Rule 11.190(g).

User 1 enters an unpriced Retail Liquidity Provider order to buy ABC [at \$10.05] for 500 shares

User 2 then enters an unpriced Discretionary Peg order to buy 500 shares of ABC

User 3 then enters a Midpoint Peg order to buy 500 shares of ABC at a limit price of \$10.04

Example 1: Retail Member Organization enters a Retail order to sell 800 shares of ABC. The order will first execute against the full size of User 1's buy order, and then execute against 300 shares of User 2's buy order, at which point the entire size of the Retail order to sell 800 shares is depleted. In this example the Retail order does not execute against User 3's buy order because the order is not priced to execute at \$10.05, the current Midpoint Price.

Example 2: Assume the same facts above, except that User 2's unpriced Discretionary Peg order to buy ABC is for 100 shares. The incoming Retail order to sell 800 shares executes first against User 1's buy order for 500 shares at \$10.05, then against User 2's buy order for 100 shares at \$10.05. The Retail order still does not execute against User 3's buy order because the order is not priced to execute at \$10.05, the current Midpoint Price. The Retail order is filled for 600 shares and the balance of 200 shares is cancelled back to the Retail Member Organization.

Example 3: Assume the same facts as Example 1, except that User 3 enters a nondisplayed limit order to buy 300 shares of ABC at a limit price of \$10.05. The



incoming Retail order to sell 800 shares executes first against User 1's order for 500 shares at \$10.05, then against User 3's order for 300 shares (because it has priority over User 2's Discretionary Peg order pursuant to IEX Rule 11.220(a)(1)(C)(vii)), completing the Retail order's 800 share quantity. User 2's buy order is not executed because it is ranked behind Users 1 and 3.

Example 4: Assume the same facts as Example 1, except that User 3 enters an unpriced Midpoint Peg order to buy 300 shares [at \$10.05] before User 1 enters an unpriced Retail Liquidity Provider order to buy 300 shares [at \$10.05]. The incoming Retail order to sell 800 shares executes first against User [1]3's order to buy 300 shares at \$10.05 (because it has priority over User [3]1's [Midpoint Peg]Retail Liquidity Provider order pursuant to IEX Rule 11.232(e)(3)(A)(iii)[ and (iv)], then against User [3]1's buy order for 300 shares at \$10.05, and then against User 2's buy order for the remaining 200 shares at \$10.05, completing the Retail order's 800 share quantity.

Example 5: Assume the same facts as Example 1, except that User 3 enters a displayed odd lot limit order to buy 50 shares of ABC at a limit price of \$10.06. The incoming Retail order to sell 800 shares executes first against User 3's order for 50 shares at \$10.06, then against User 1's buy order for 500 shares at \$10.05, and then against User 2's buy order for the remaining 250 shares at \$10.05, completing the Retail order's 800 share quantity.

- (f) Retail Liquidity Identifier. An identifier shall be disseminated through the Exchange's TOPS and DEEP data products (specified in IEX Rule 11.330) and through the appropriate securities information processor, when Retail Liquidity Provider order interest ("RLP Interest") aggregated to form at least one round lot for a particular security is available in the System ("Retail Liquidity Identifier"), provided that the RLP Interest is resting at the Midpoint Price and priced at least \$0.001 better than the NBB or NBO. The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy, sell, or buy and sell) of the RLP Interest, but shall not include the price or size of the RLP Interest.

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## Exhibit 5 – Text of Proposed Rule Change

Exhibit 5 shows the text of the proposed rule change, as amendment by this Partial Amendment No. 1. Proposed new language is underlined; proposed deletions are in brackets.

## CHAPTER 11. TRADING RULES

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## Rule 11.190. Orders and Modifiers

(a) No Change.

(b) (1)-(13) No Change.

(14) Retail Liquidity Provider Order. A [Discretionary Peg]Midpoint Peg order that may not be a MQTY, as defined in paragraph (11) above, and is only eligible to execute against Retail orders through the execution process described in Rule 11.232(e).

(15) Retail Order. An order submitted by a Retail Member Organization (as defined in Rule 11.232) and designated with a “Retail order” modifier. A Retail order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. A Retail order 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 (a “retail customer”). An order from a [natural person]retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form - such as an Individual Retirement Account, Corporation, or a Limited Liability Company - that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s).

...Supplementary Material...

.01 Retail Orders. A “Retail order”, as defined in Rule 11.190(b)(15), may only be entered on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). For purposes of counting orders to determine whether the 390 equity order per day on average threshold has been reached:

(a) “Parent”/”Child” Orders. A “parent” order that is broken into multiple “child”

orders by a broker or dealer, or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer, counts as one order even if the “child” orders are routed across multiple exchanges.

(b) Cancel/Replace. Any order that cancels and replaces an existing order counts as a separate order; except that an order that cancels and replaces any “child” order resulting from a “parent” order that is broken into multiple “child” orders, does not count as a new order.

.02 “Retail Member Organizations”, as defined in Rule 11.232(a)(1), that enter Retail orders must have reasonable policies and procedures in place to ensure that such orders are appropriately represented on the Exchange. Such policies and procedures should provide for a review of retail customers’ activity on at least a quarterly basis.

(a) Retail orders for any retail customer that had an average of more than 390 equity orders per day during any month of a calendar quarter are not eligible to be entered as Retail orders for the next calendar quarter. Retail Member Organizations must conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter.

(b) If during a quarter the Exchange identifies a retail customer for which orders are being represented as Retail orders but that has averaged more than 390 equity orders per day during a month, the Exchange will notify the Retail Member Organization, and the Retail Member Organization will be required to change the manner in which it is representing the retail customer’s orders within five business days.

(16) No Changes.

(c)–(h) No Changes.

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#### Rule 11.232. Retail Price Improvement Program

(a) – (d) No Change.

(e) Priority and Order Execution.

(1) Retail Liquidity Provider orders in the same security shall be ranked and allocated according to price then time of entry into the System.

(2) Retail orders shall seek to execute upon entry into the System at the Midpoint Price,

except that a Retail order to buy (sell) may also seek to execute against a displayed odd lot to sell (buy) priced at or between the NBB (NBO) and the Midpoint Price.

(3) Retail orders shall execute against orders resting on the Order Book in price/time priority in accordance with IEX Rule 11.230 subject to the following:

(A) A Retail order to buy (sell) shall execute upon entry against sell (buy) orders resting on the Order Book in the following order:

- (i) displayed sell (buy) orders at the NBO (NBB) during a locked or crossed market;
- (ii) displayed sell (buy) odd lot orders priced to trade between the NBB (NBO) and the MidPoint Price[.]; and
- (iii) Retail Liquidity Provider orders and nondisplayed orders priced to trade at the Midpoint Price[.];.

[(iv) Retail Liquidity Provider orders priced to trade at the Midpoint Price.]

Examples of priority and order allocation are as follows:

NBBO for security ABC is \$10.00 — \$10.10. It is not a period of quote instability as defined in Rule 11.190(g).

User 1 enters an unpriced Retail Liquidity Provider order to buy ABC [at \$10.05 ]for 500 shares

User 2 then enters an unpriced Discretionary Peg order to buy 500 shares of ABC

User 3 then enters a Midpoint Peg order to buy 500 shares of ABC at a limit price of \$10.04

Example 1: Retail Member Organization enters a Retail order to sell 800 shares of ABC. The order will first execute against the full size of User 1[2]'s buy order, and then execute against 300 shares of User 1[2]'s buy order, at which point the entire size of the Retail order to sell 800 shares is depleted. In this example the Retail order does not execute against User 3's buy order because the order is not priced to execute at \$10.05, the current Midpoint Price.

Example 2: Assume the same facts above, except that User 2's unpriced Discretionary Peg order to buy ABC is for 100 shares. The incoming Retail order to sell 800 shares executes first against User 1[2]'s buy order for [1]500 shares at \$10.05, then against User 2[1]'s buy order for [5]100 shares at \$10.05. The Retail order still does not execute against User 3's buy order because the order is not priced to execute at \$10.05, the current Midpoint Price. The Retail order is filled for 600 shares and the balance of 200 shares is cancelled back to the Retail Member Organization.

Example 3: Assume the same facts as Example 1, except that User 3 enters a nondisplayed limit order to buy 300 shares of ABC at a limit price of \$10.05. The incoming Retail order to sell 800 shares executes first against User 1[3]'s order for [3]500 shares at \$10.05, then against User 3's order for 300 shares (because it has priority over User 2's Discretionary Peg order pursuant to IEX Rule 11.220(a)(1)(C)(vii)) [ and then against User 2 for the remaining 500 shares], completing the Retail order's 800 share quantity. User [1]2's buy order[s] is not executed because it is ranked behind Users 1[2] and 3.

Example 4: Assume the same facts as Example 1, except that User 3 enters an unpriced Midpoint Peg order to buy 300 shares before User 1 enters an unpriced Retail Liquidity Provider order to buy 300 shares. The incoming Retail order to sell 800 shares executes first against User 3's order to buy 300 shares at \$10.05 (because it has priority over User 1's Retail Liquidity Provider order pursuant to IEX Rule 11.232(e)(3)(A)(iii)), then against User 1's buy order for 300 shares at \$10.05, and then against User 2's buy order for the remaining 200 shares at \$10.05, completing the Retail order's 800 share quantity.

Example [4]5: Assume the same facts as Example 1, except that User 3 enters a displayed odd lot limit order to buy 50 shares of ABC at a limit price of \$10.06. The incoming Retail order to sell 800 shares executes first against User 3's order for 50 shares at \$10.06, then against User [2]1's buy order for 500 shares at \$10.05, and then against User [1]2's buy order for the remaining 250 shares at \$10.05, completing the Retail order's 800 share quantity.

- (f) Retail Liquidity Identifier. An identifier shall be disseminated through the Exchange's TOPS and DEEP data products (specified in IEX Rule 11.330) and through the appropriate securities information processor, when Retail Liquidity Provider order interest ("RLP Interest") aggregated to form at least one round lot for a particular security is available in the System ("Retail Liquidity Identifier"), provided that the RLP Interest is resting at the Midpoint Price and priced at least \$0.001 better than the NBB or NBO. The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy, sell, or buy and sell) of the RLP Interest, but shall not include the price or size of the RLP Interest.

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