SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81482; File No. SR-IEX-2017-22)

August 25, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Order Approving a Proposed Rule Change to Introduce a New Market Maker Peg Order

I.   Introduction

On June 30, 2017, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the

Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to

(i) introduce a new Market Maker Peg Order; (ii) amend IEX Rule 11.510(c) to specify

connectivity within the Exchange System when repricing a Market Maker Peg Order; and (iii)

amend IEX Rule 11.340(d) to describe how Market Maker Peg Orders will be priced in order to

comply with the Plan to Implement a Tick Size Pilot Program ("Tick Pilot Plan").[3] The

proposed rule change was published for comment in the Federal Register on July 11, 2017.[4] The

Commission received no comments on the proposed rule change. This order approves the

proposed rule change.

II.   Description of the Proposed Rule Change

The Exchange proposes to introduce a new Market Maker Peg Order that the Exchange

states is designed to promote compliance by market makers with the continuous quoting and

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4-657). See also Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

[4]   See Securities Exchange Act Release No. 81078 (July 5, 2017), 82 FR 32026 ("Notice").

pricing obligations of IEX Rule 11.151 (Market Maker Obligations),[5] in a manner consistent with the requirements under Rule 15c3-5 of the Act ("Market Access Rule")[6] and Regulation SHO.[7] The Exchange states that "this order-based approach would provide an effective compliance tool to facilitate market makers compliance with the requirements of the Market Access Rule and Regulation SHO while also providing quotation adjusting functionality to its market makers."[8] IEX also states that market makers will have control of order origination, as required by the Market Access Rule, and retain the ability to make marking and locate determinations prior to order entry, as required by Regulation SHO.[9]

As proposed, the Market Maker Peg Order will be a one-sided limit order that, similar to other peg orders available to market participants on the Exchange,[10] will be tied or "pegged" to a certain price. Unlike other peg orders on the Exchange, however, it will be distinguishable in that it will always be displayed. Use of the Market Maker Peg Order will be limited to the Exchange's registered market makers.[11] Market Maker Peg Orders will have their price automatically set and adjusted by the System,[12] both upon entry and any time thereafter, in order to comply with

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[5]   IEX Rule 11.151 requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid ("NBB") and National Best Offer ("NBO").

[6]   17 CFR 240.15c3-5.

[7]   See Notice, supra note 4, at 32027. See also 17 CFR 242.200 through 204 (Regulation SHO).

[8]   See Notice, supra note 4, at 32027.

[9]   See id.

[10]   See Rule 11.190(a)(3).

[11]   See IEX Rule 11.150.

[12]   The term "System" is defined in IEX Rule 1.160(nn).

the Exchange's rules regarding market maker quoting and pricing obligations.[13]

Specifically, upon entry or at the beginning of the Regular Market Session,[14] as applicable, the entered bid or offer will be automatically priced by the System at the Designated Percentage (as defined in IEX Rule 11.151(a)(6)) away from the then current NBB or NBO, as applicable, or if there is no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for market makers set forth in IEX Rule 11.151(a). Market makers will be able to submit Market Maker Peg Orders to the Exchange starting at the beginning of the Pre-Market Session, but the order will not be executable or automatically priced until the beginning of the Regular Market Session, and will expire at the end of the Regular Market Session.

Upon reaching the Defined Limit (as defined in IEX Rule 11.151(a)(7)), the price of a Market Maker Peg Order will be adjusted by the System to the Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, the order will, by default, be the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage towards the then current NBB or NBO, its price will be adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as applicable. If there is no NBB or NBO, as applicable, the order will be adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single

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[13]   The Market Maker Peg Order is one-sided, and thus a market maker seeking to use Market Maker Peg Orders as a backstop to help facilitate compliance with the Exchange's continuous two-sided quotation requirements set forth in IEX Rule 11.151 would need to submit both a bid and an offer using the order type.

[14]   The term "Regular Market Session" is defined in IEX Rule 1.160(gg).

plan processor. In the event that pricing a Market Maker Peg Order at the Designated Percentage away from the then current NBB and NBO, or, if no NBB or NBO, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order will be cancelled or rejected.[15]

If, after entry, the Market Maker Peg Order is priced based on the last reported sale from the single plan processor and such Market Maker Peg Order is established as the NBB or NBO, the Market Maker Peg Order will not be subsequently adjusted until either there is a new consolidated last sale or a new NBB or NBO is established.

For purposes of the proposed rule, the Exchange will apply the Designated Percentage and Defined Limit as set forth in IEX Rules 11.151(a)(6) and (7), respectively, subject to the following exception: for all NMS stocks with a price less than $1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, the Exchange will use the Designated Percentage and Defined Limit applicable to NMS stocks equal to or greater than $1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products.

Market Maker Peg Orders will not be eligible for routing pursuant to IEX Rule 11.230(b) and are always displayed on the Exchange. Notwithstanding the availability of Market Maker Peg Order functionality, a market maker will remain responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of IEX Rule 11.151. A new

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[15]   According to the Exchange, a limit price entered on a Market Maker Peg Order is designed to allow a market maker to specify a price at which the initial pricing and any subsequent repricing of the order to the Designated Percentage will be constrained. See Notice, supra note 4, at 32028.

timestamp will be created for the order each time that it is automatically adjusted in accordance with the proposed rule.

The Exchange states that the System will be available for entry, modification, and cancellation of Market Maker Peg Orders only via the POP[16] pursuant to IEX Rule 11.510(b), and thus will be subject to the Inbound and Outbound POP Latency upon entry, accordingly.[17] In addition, the Exchange proposes to amend IEX Rule 11.510(c) (System Connectivity) to provide that each time a Market Maker Peg Order is automatically adjusted by the System in accordance with proposed IEX Rule 11.190(b)(13), all inbound and outbound communications related to the modified order instruction will traverse an additional POP between the Market Maker Peg Order repricing logic and the Order Book, which is subject to an equivalent 350 microseconds of latency.[18] The Exchange states that this approach is designed so that a market maker using a Market Maker Peg Order will be in the same position as a market maker updating its own quote through the POP.[19]

Finally, the Exchange proposes to amend IEX Rule 11.340 (Compliance with Regulation

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[16]   The term "POP" is defined in IEX Rule 11.510(a).

[17]   See 11.510(b)(1) and (2), respectively, which define the "Inbound POP Latency" as an equivalent 350 microseconds of latency from the Exchange-provided network interface at the IEX POP to the System at the primary data center; and "Outbound POP Latency" as an equivalent 350 microseconds of latency from the System at the primary data center to the Exchange-provided network interface at the IEX POP.

[18]   The Exchange states that the same "additional POP" that is used to implement an equivalent 350 microseconds of latency to all routable orders sent by the System to the Order Book pursuant to Rule 11.510(c)(1) will be used to implement such delay to all modified order instructions for Market Maker Peg Orders pursuant to proposed Rule 11.190(b)(13). See Notice, supra note 4, at 32028 fn 19.

[19]   See Notice, supra note 4, at 32028. For additional details concerning IEX's approach to subject all inbound and outbound communications related to the repricing of Market Maker Peg Orders to POP latency, see Notice, supra note 4, at 32028-29.

NMS Plan to Implement a Tick Size Pilot) to specify that if, pursuant to proposed IEX Rule 11.190(b)(13), a Market Maker Peg Order in a Pilot Security[20] will be priced at an increment other than $0.05, the System will round such order to buy (sell) up (down) to the nearest permissible increment.[21] IEX states that this approach is designed to ensure that Market Maker Peg Orders for Pilot Securities are appropriately priced in $0.05 increments by rounding such orders to the nearest permissible increment that is also compliant with the minimum market maker quoting obligations set forth in IEX Rule 11.151.[22]

In its proposal, the Exchange noted its intention to implement the proposed changes during the third quarter of 2017.[23]

III.   Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[24] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

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[20]   The term "Pilot Security" has the meaning specified in the Tick Pilot Plan.

[21]   The Exchange states that if the rounding methodology results in a Market Maker Peg Order being priced to a price below $0.05, the order will be cancelled back to the market maker that entered the order. See Notice, supra note 4, at 32028.

[22]   See id.

[23]   See id. at 32029.

[24]   In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[25]   15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change also is designed to support the principles of Section 11A(a)(1)[26] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The Commission finds that the Exchange's proposal is consistent with the Act because it provides an optional tool that market makers may use as a backstop to help maintain a continuous quote in satisfaction of the Exchange's minimum continuous quoting requirements, which may assist in the maintenance of fair and orderly markets. The Commission notes, however, that notwithstanding the availability of the Market Maker Peg Order functionality, the market maker remains responsible for meeting its obligations under IEX Rule 11.151, including entering, monitoring, and re-submitting, as applicable, compliant quotations. At the same time, the Commission finds that the proposal is reasonably designed to assist market makers in complying with the regulatory requirements of the Market Access Rule and Regulation SHO. The Commission notes, however, the Market Maker Peg Order does not by itself ensure that the market maker is satisfying the requirements of the Market Access Rule or Regulation SHO, including the satisfaction of the locate requirements of Rule 203(b)(1) of the Act or any exception thereto.

The Commission believes that the Exchange's proposal to subject all inbound and outbound communications related to Market Maker Peg Orders, including the automatic repricing of such orders, to POP latency is consistent with the Act. In particular, this treatment

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[26] 15 U.S.C. 78k-1(a)(1).

of the Market Maker Peg Order places a market maker using this order type in the same position

as another market maker placing and updating its own quote directly without using the Market

Maker Peg Order type - both will be subject to the POP and experience the same latency. In

addition, this approach is consistent with the treatment of other displayed orders on the

Exchange, all of which are subject to the POP latency.

Further, the Commission believes that the Exchange's proposal to specify how Market

Maker Peg Orders will be priced in order to comply with the Tick Pilot Plan is consistent with

the Act and Rule 608 of Regulation NMS[27] because it implements the Tick Pilot Plan and

conforms Exchange rules to those requirements.[28]

Finally, the Commission notes that other national securities exchanges offer similar order

types to the Exchange's proposed Market Maker Peg Order,[29] and the Commission received no

comments on the Exchange's proposed rule change.

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[27]   17 CFR 242.608.

[28]   The Commission notes that in this regard IEX's proposal is substantially similar to Bats
        BZX Exchange, Inc. ("Bats") Rule 11.27(c)(5).

[29]   See, e.g., Bats Rule 11.9(c)(16), Nasdaq Stock Market LLC Rule 4702(b)(7), and Bats
        EDGX Exchange, Inc. Rule 11.8(e).

IV.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[30] that the

proposed rule change (SR-IEX-2017-22), be and hereby is, approved.

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

authority.[31]

Eduardo A. Aleman
Assistant Secretary

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[30]   15 U.S.C. 78s(b)(2).

[31]   17 CFR 200.30-3(a)(12).