

Office of the General Counsel to spend amounts exceeding the previously approved program area budget for the year. As a result, on July 14, 2021 it submitted a supplemental budget to the SEC. The PCAOB's 2021 supplemental budget requests Commission approval to transfer \$3.4 million of FY 2021 funding from a certain program area in which all funds allocated are projected to not be spent in 2021 to the Office of the General Counsel to cover the projected excess costs related to the engagement of outside counsel. The supplemental budget does not request an increase to the PCAOB's previously approved 2021 budget of \$287.3 million.

The Commission directs the PCAOB to keep the Commission, through staff in its Office of the Chief Accountant, apprised each month of monthly legal expenses incurred and paid through the end of its fiscal year 2021. Separately, the Commission directs that the PCAOB implement policies and procedures to ensure additional funds will not be required for spending on outside counsel for the 2021 fiscal year beyond those approved in this Order. The Commission also directs the PCAOB to inform the Commission of all of the steps it will take to reduce its current and future reliance on outside counsel.

The Commission has determined that the PCAOB's 2021 supplemental budget is consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

*It is ordered*, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB supplemental budget for calendar year 2021 is approved.

By the Commission.

**Vanessa A. Countryman,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93027; File No. SR-IEX-2021-11]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide That a Reserve Order May Have (i) an Odd Lot Sized Display Quantity and (ii) an Optional Random Initial and Replenishment Display Quantity

September 16, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on September 14, 2021, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> IEX is filing with the Commission a proposed rule change to provide that a reserve order may have (i) an odd lot sized display quantity and (ii) an optional random initial and replenishment display quantity. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act<sup>5</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>6</sup>

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 the proposed rule filing is to amend IEX Rule 11.190(b)(2) to provide that a reserve order<sup>7</sup> may

have (i) an odd lot<sup>8</sup> size display quantity and (ii) an optional random initial and replenishment display quantity. Specifically, as proposed, a reserve order may have an odd lot as well as a round or mixed lot initial and replenishment display quantity. In addition, as proposed, a Member<sup>9</sup> may attach an optional random replenishment instruction to any reserve order pursuant to which the reserve order's display quantity (both upon initial posting to the Order Book<sup>10</sup> and upon any subsequent replenishments) would be randomly determined by the System<sup>11</sup> within a replenishment range specified by the Member. In addition, IEX proposes to make conforming edits to IEX Rules 11.190(b)(2) and 11.220(a)(1)(C) reflecting the proposed changes to reserve order functionality. The proposed changes are designed to increase displayed liquidity on the Exchange (potentially at prices better than the NBBO),<sup>12</sup> to the benefit of all market participants, by providing additional optionality to Members in the use of odd lot size reserve order displayed quantities, as well as helping to protect Members using reserve orders with random replenishment from potential information leakage.

##### Background

IEX, like other equities exchanges,<sup>13</sup> offers Members a "reserve" order type, which allows Members to submit a partially displayed limit order,<sup>14</sup> so that a portion of the order is displayed ("display quantity") and a portion of the order is non-displayed ("reserve quantity").<sup>15</sup> As set forth in IEX Rule 11.190(b)(2), when Users<sup>16</sup> submit a reserve order, they must specify the display quantity (which must be a round or mixed lot). Upon entry, the System attempts to execute a reserve order as a single order of its full, unexecuted size. If an incoming reserve order is not fully executed, it posts to the Order Book where it is effectively

<sup>8</sup> An odd lot order is generally any order of less than 100 shares (the size of a round lot order). See IEX Rule 11.180(a).

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

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

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

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

<sup>13</sup> See, e.g., Cboe BZX Exchange, Inc. ("BZX") Rule 11.9(c)(1); MEMX, LLC ("MEMX") Rule 11.8(b)(4); The Nasdaq Stock Market LLC ("Nasdaq") Rule 4703(h); and New York Stock Exchange LLC Rule 7.31(d)(1).

<sup>14</sup> See IEX Rule 11.190(a)(1).

<sup>15</sup> See IEX Rule 11.190(b)(2).

<sup>16</sup> See IEX Rule 1.160(qq). The text of IEX Rule 11.190(b)(2) uses the term "User", so any direct references to the text of the rule will use the term "User." Otherwise, for purposes of this rule filing, the term "Member" will be used synonymously with the term "User."

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> See IEX Rule 11.190(b)(2).

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

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

treated as two discrete orders: The User instructed display quantity posts to the Order Book as a displayed order (“displayed portion”) and the reserve quantity posts to the Order Book as a non-displayed order (“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, because the displayed portion is subject to display-price sliding<sup>17</sup> while the non-displayed portion is subject to the Midpoint Price Constraint.<sup>18</sup> If 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 refreshed for either (i) the original displayed quantity, or (ii) the entire reserve quantity, if the total number of unexecuted shares in the order is smaller than the original Member instructed displayed quantity. Each time the displayed portion of the order is refreshed 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 refresh process.

IEX recently implemented a rule change that provides for the option to display odd lot size orders, including allowing them to aggregate to form a protected quotation.<sup>19</sup> In connection with the implementation of displayed odd lot size orders, IEX modified its reserve order functionality to provide that if the display quantity of a reserve order decrements to less than a round lot (and there are not enough shares remaining in the reserve quantity to refresh the display quantity to more than a round lot), the display quantity retains its displayed status and its execution priority.<sup>20</sup>

#### Proposal

IEX proposes to amend IEX Rule 11.190(b)(2) to: (i) Allow reserve orders to be submitted with an odd lot sized display portion; and (ii) allow Members to elect that the initial and replenishment display quantity for the reserve order will be randomly determined by the System within a range specified by the Member. As

described below, IEX believes this proposal, which combines order types and functionality previously considered by the Commission, will encourage the posting of more displayed liquidity on the Exchange in a manner that benefits all market participants.

#### 1. Odd Lot Display Quantity Reserve Orders

IEX proposes to modify its reserve order type to allow Members to submit a reserve order with an odd lot size display quantity, in addition to the current functionality which allows Members to submit a reserve order with either a round or mixed lot size display quantity.

As proposed, odd lot size display quantity reserve orders (“Displayed Odd Lot Reserve orders”) would function much like a round or mixed lot size display quantity reserve order, except that the display quantity would only replenish from the reserve quantity when the displayed portion of the order is decremented to zero shares, as opposed to round and mixed lot size display quantity reserve orders, which would continue to replenish the display quantity whenever they decrement to less than a round lot. IEX believes that replenishing a Displayed Odd Lot Reserve order only when the display quantity has been fully exhausted is the most reasonable and workable approach. As a threshold matter, the display quantity of a Displayed Odd Lot Reserve order by definition will always be less than a round lot and will vary based on the Member instructed displayed quantity and can be as low as one share. Therefore, the trigger for replenishment cannot be a quantity that is the same for all orders unless it is when the displayed quantity decrements to zero.

IEX notes that it also considered having Displayed Odd Lot Reserve orders replenish anytime one or more share of the displayed portion was executed, but decided against it for the following reasons. First, as a practical matter, Displayed Odd Lot Reserve orders will be far less useful to Members if any partial executions of the display portion trigger a replenishment, resulting in the display portion receiving a new time stamp and being prioritized behind all other existing displayed orders at that price. Second, as discussed below, a Displayed Odd Lot Reserve order would be eligible for optional random replenishment, which means the next time the display quantity of the order replenishes, it could be randomly set at a value lower than the prior display quantity, and IEX seeks to avoid this confusing and

illogical outcome. Third, IEX believes that having a Displayed Odd Lot Reserve Order replenish any time there is a partial execution of the displayed portion of the order could increase the likelihood of adverse selection through information leakage of the presence of a larger non-displayed reserve portion of the order. IEX notes that the Commission made the same determination when it approved a 2018 rule filing by the New York Stock Exchange LLC (“NYSE”) that changed NYSE’s reserve order replenishment trigger from replenishing after any execution of a portion of the displayed quantity to only replenishing when the display quantity decrements to less than a round lot.<sup>21</sup> Based on informal discussions with Members, IEX believes that the proposed approach would lead to increased use of Displayed Odd Lot Reserve orders compared to other approaches, as discussed above. IEX also notes that this proposed approach to Displayed Odd Lot Reserve order replenishment mirrors the functionality of options exchanges with reserve order types that display in odd lot quantities that replenish their display quantity only when it is fully exhausted.<sup>22</sup>

IEX believes that providing for Displayed Odd Lot Reserve orders will incentivize the posting of more displayed liquidity on IEX, and the corresponding opportunity for market participants to interact with displayed liquidity. In this regard, IEX believes that the increasing prevalence of high-priced securities (including many securities that trade for more than \$1,000 per share)<sup>23</sup> makes quoting in round lot multiples inaccessible to some market participants. As the Commission recently noted, “a significant proportion of quotation and trading activity occurs in odd-lots, particularly for frequently traded, high priced stocks.”<sup>24</sup> The Commission also noted that “frequently traded, high priced securities were more likely to have executions occur in odd-lot sizes (about 34% of the share volume of the 50 securities with the highest

<sup>21</sup> See Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018). The fact that, until 2018, NYSE triggered replenishment with any partial execution of the display portion of a reserve order shows that only replenishing a reserve order when it decrements to less than a round lot is not the only Commission-approved replenishment trigger.

<sup>22</sup> See BZX Rule 21.1(d)(1); Cboe EDGX Exchange, Inc. (“EDGX”) Rule 21.1(d)(1).

<sup>23</sup> As of July 2021, there are 21 securities trading for \$1,000 per share or more, and an additional 38 securities trading between \$500 and \$999.99 per share.

<sup>24</sup> See Securities Exchange Act Release No. 90610 (December 9, 2020), 86 FR 18596, 18616 n. 240 (April 9, 2021) (“Market Data Infrastructure Final Rule”).

<sup>17</sup> See IEX Rule 11.190(h)(1).

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

<sup>19</sup> See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR-IEX-2021-01).

<sup>20</sup> See *supra* note 19.

share prices) than lower priced securities (about 3.4% of the 50 securities with the lowest share prices).<sup>25</sup>

Furthermore, the Commission has noted that almost half of all on-exchange trades are odd lot sized, and about 40% of those odd lot trades occur at prices better than the NBBO.<sup>26</sup> Thus, allowing reserve orders to display odd lot quantities would both encourage the posting of more displayed liquidity on the Exchange, and offer more price improvement for high priced stocks that often trade in odd lot quantities at better prices than the NBBO.<sup>27</sup>

Additionally, based on informal discussions with IEX Members, the Exchange believes that use of reserve orders would increase in high priced securities if the displayed portion of the reserve order could be entered in an odd lot quantity.

IEX notes that its proposal for Displayed Odd Lot Reserve orders is not novel, in that all four of the Cboe equities exchanges allow a reserve order to be submitted with a user instructed display quantity of less than one round lot.<sup>28</sup> Additionally, BZX's and EDGX's options exchanges offer displayed odd lot reserve orders that replenish in the same manner as the current proposal—when the displayed portion of the odd lot reserve order is fully executed, the order is replenished from the reserve quantity.<sup>29</sup>

## 2. Random Replenishment

IEX proposes to offer Members the option to elect that the initial and each replenishment display quantity for the reserve order will be randomly determined by the System within a range specified by the Member. IEX proposes to add the defined term of “Max Floor” to IEX Rule 11.190(b)(2), to specify the base display quantity for all reserve orders. As proposed, a Member can submit a reserve order with a Max Floor in an odd lot quantity, as well as

in a quantity equal to or greater than a round lot as provided for under current rules. Further, IEX proposes that if the reserve order's Max Floor is either an odd lot or a round lot multiple, the Member may include an instruction that the reserve order's display quantity be randomly replenished (as discussed below, random replenishment would not be available to reserve orders with a Max Floor of either a single round lot or a mixed lot).

As proposed, Members may attach an optional random replenishment instruction (the “Display Range”) to any reserve order with a Max Floor of either an odd lot or a round lot multiple. If the Member includes a Display Range with a reserve order, the reserve order's display quantities (both upon initial posting and upon any subsequent replenishments) would be randomly determined by the System within a replenishment range specified by the Member. Specifically, the Member would specify a Display Range and a Max Floor. The System would then randomly select the number of shares it will use to replenish the display quantity in the following ways (depending upon the Max Floor of the Order):

- If the reserve order's Max Floor equals a round lot multiple, the Member would select a Display Range in a round lot or multiple thereof that is less than the Max Floor. The System would then use the Max Floor and Display Range to determine the initial and replenishment displayed quantity each time the order is subject to replenishment by randomly selecting a round lot number of shares that is between the Max Floor minus the Display Range and the Max Floor plus the Display Range.

- If the reserve order's Max Floor is less than one round lot, the Member would select a Display Range of one or more shares that is less than the Max Floor. The System would then use the Max Floor and Display Range to determine the initial and replenishment displayed quantity each time the order is subject to replenishment by randomly selecting a number of shares that is between the Max Floor minus the Display Range and the Max Floor plus the Display Range (provided that if the Max Floor plus the Display Range equals a round lot or greater, the high end of the Display Range will be one share less than a round lot).<sup>30</sup>

<sup>30</sup> Because random replenishment would not be available for mixed lot display quantity reserve orders, the maximum value for the random replenishment range of a Displayed Odd Lot Reserve order must be one share less than a round lot. Therefore, if a Member submitted a Displayed Odd Lot Reserve order with a Max Floor of 95 and

As proposed, Members could still elect to have their reserve orders employ the current, fixed replenishment, functionality. In order to use fixed replenishment, a Member would submit a reserve order with a Max Floor, but without a Display Range. With fixed replenishment, the display quantity will be equal to the Max Floor both when the order first posts to the Order Book and any time the display quantity is replenished from the reserve (*i.e.*, when the display quantity is decremented to zero shares if the Max Floor is less than one round lot, or any time the display quantity decrements to less than one round lot if the Max Floor is greater than or equal to a round lot).

Random replenishment for reserve orders is an optional additional tool to assist Members in achieving the general goal of reserve orders, which is to display less than the full size of the order to avoid leaking information regarding the presence of a large resting reserve order.<sup>31</sup> Because random replenishment results in the display quantity of a Reserve order varying with each replenishment, this functionality will further reduce the ability of other market participants to detect that such order is in fact a reserve order with a potentially large non-displayed reserve portion.

IEX is not proposing to offer random replenishment for reserve orders with a Max Floor of a single round lot because the random replenishment functionality would not work with a Max Floor of one round lot. Specifically, as noted above, when a Member selects random replenishment for a reserve order, the Member must submit the order with a Display Range that is less than the Max Floor. Thus, if a reserve order's Max Floor is one round lot, the Display Range must be zero, so the reserve order will always replenish using only the Max Floor, rendering random replenishment inoperable. Therefore, reserve orders with a Max Floor equal to one round lot will only be able to use the current fixed replenishment functionality.

Additionally, IEX is not proposing to offer random replenishment for reserve orders with a Max Floor that is a mixed lot because implementation would involve technical complexity. From informal discussions with Members, IEX determined there was little interest in having the option of random replenishment for a displayed mixed lot

a Display Range of 10, the System would randomly select a replenishment value between 85 and 99.

<sup>31</sup> Identification of a large resting non-displayed order on an exchange can provide information regarding buy or sell interest resulting in market moving trading adverse to the resting order.

<sup>25</sup> See *supra* note 24.

<sup>26</sup> See *supra* note 24.

<sup>27</sup> Displayed odd lot orders do not update the NBBO unless aggregated to form a round lot size quotation, and thus can be priced better than the NBBO.

<sup>28</sup> See BZX Rule 11.9(c)(1); Cboe BYX Exchange, Inc. (“BYX”) Rule 11.9(c)(1); Cboe EDGA Exchange, Inc. (“EDGA”) Rule 11.6(m); EDGX Rule 11.6(m); see also Cboe US Equities FIX Specification (Version 2.9.2) avail. at [http://cdn.cboe.com/resources/membership/Cboe\\_US\\_Equities\\_FIX\\_Specification.pdf](http://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf) (setting no minimum value for the user instructed display quantity for reserve orders). IEX notes that the Cboe equity exchange rules clearly allow for the entry of an odd lot size display quantity, but are unclear as to how much the display quantity must decrement before it replenishes to its initial display quantity.

<sup>29</sup> See *supra* note 22.

reserve order. Thus, IEX believes that offering only fixed replenishment for displayed mixed lot reserve orders strikes the right balance of offering enhanced reserve order functionality to Members without introducing unnecessary technical complexity to its reserve order functionality.

IEX notes that the proposed random replenishment functionality for reserve orders with a Max Floor that is a round lot multiple is substantially similar to that of several other equity exchanges that offer random replenishment for reserve orders.<sup>32</sup> And as described above, the proposed new random replenishment functionality for reserve orders with a Max Floor that is less than a round lot is substantially similar to the functionality used by options exchanges that offer displayed odd lot reserve orders with random replenishment.<sup>33</sup>

The following examples demonstrate the proposed odd lot fixed and random replenishment functionality:

**Example 1: Displayed Odd Lot Reserve Order With Fixed Replenishment**

- Member submits a reserve order to buy 200 shares of XYZ with a Max Floor of 20 and no Display Range.
- The order does not execute upon entry and posts to the Order Book with a display quantity of 20 shares and a reserve quantity of 180 shares.
- An inbound order to sell 10 shares of XYZ is entered into the System and executes against 10 shares of the displayed quantity. The reserve order has a displayed portion of 10 shares and a reserve quantity of 180 shares. Because the displayed portion did not decrement to zero shares, it does not get replenished.
- A second inbound market order to sell 10 shares of XYZ is entered into the System and executes against the remaining displayed quantity, decrementing it zero shares.
- The System replenishes the display quantity to 20 shares (the Max Floor), leaving a reserve quantity of 160 shares.

**Example 2: Displayed Round Lot Multiple Reserve Order With Random Replenishment**

- Member submits a reserve order to buy 2000 shares of XYZ with a Max Floor of 400 and a Display Range of 200.

<sup>32</sup> See BZX Rule 11.9(c)(1); EDGX Rule 11.6(m); MIAx PEARL LLC Rule 2614(c)(8)(A); MEMX Rule 11.6(k)(1)(A); Nasdaq Rule 4703(h).

<sup>33</sup> See *supra* note 22; see also Cboe US Options FIX Specification (Version 2.7.37) avail. at [https://cdn.cboe.com/resources/membership/US\\_Options\\_FIX\\_Specification.pdf](https://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf) (random replenishment of an option reserve order requires a Display Range of one or more shares, which is the same functionality IEX is proposing for random replenishment of a Displayed Odd Lot Reserve order).

- The order does not execute on entry, and the System uses the Max Floor and the Display Range to generate a replenishment range of either 200, 300, 400, 500, or 600 shares from which the System will randomly select the initial replenishment quantity. The System randomly selects 300 as the initial replenishment quantity, meaning the reserve order's initial display quantity will be 300 shares, with a reserve quantity of 1,700 shares.

- An incoming order to sell 250 shares matches with the resting reserve order's display quantity, leaving 50 shares in the display quantity (and 1,700 in the reserve quantity).

- Because the Max Floor is at least one round lot, the reserve order replenishes when the display quantity decrements to less than one round lot, so the System again randomly selects a replenishment quantity from the replenishment range of either 200, 300, 400, 500, or 600 shares. The System randomly selects 600 as the next replenishment quantity, meaning the display quantity will be replenished to 600 shares, with 550 shares decremented from the reserve quantity, which will now be 1,150 shares.

**Example 3: Displayed Odd Lot Reserve Order With Random Replenishment**

- Member submits a reserve order to buy 200 shares with a Max Floor of 50 and a Display Range of 3.

- The order does not execute on entry, and the System generates a replenishment range of either 47, 48, 49, 50, 51, 52, or 53 from which the System will randomly select the replenishment quantity. The System randomly selects 48 as the initial replenishment quantity, meaning the displayed quantity will be 48 shares, with the remaining 152 shares in the reserve quantity.

- An incoming order to sell 48 shares matches with the resting reserve order's displayed portion, leaving 0 shares in the display quantity (and 152 shares in the reserve quantity).

- Because the Max Floor is an odd lot, and the display quantity decremented to zero shares, the reserve order replenishes the display quantity, so the System again randomly selects a replenishment quantity from the replenishment range of either 47, 48, 49, 50, 51, 52, or 53 shares. The System randomly selects 53 as the next replenishment quantity, meaning the display quantity will be replenished to 53 shares, with 53 shares decremented from the reserve quantity, which will now be 99 shares.

IEX is also proposing to make the following conforming changes to IEX Rule 11.190(b)(2). First, IEX proposes to

delete current subparagraph (H), which describes how a displayed portion of a reserve order retains its displayed status and priority if it decrements to an odd lot, because it is rendered redundant by the introduction of displayed quantity odd lot reserve orders. Second, IEX proposes to renumber current subparagraphs (A) to (G) of the rule as subparagraphs (B) to (H) to incorporate the addition of new introductory subparagraph (A).<sup>34</sup> Third, IEX proposes to modify Supplementary Material .01 ("Reserve Orders") to clarify that displayed portions would be replenished based on the replenishment options in new IEX Rule 11.190(b)(2)(A). Finally, IEX proposes to modify IEX Rule 11.220(a)(C)(v) to change the term "refreshed" to "replenished" and to clarify that not all reserve orders replenish when the display portion decrements to less than one round lot, but rather pursuant to the conditions set forth in the proposed changes to IEX Rule 11.190(b)(2).

The following is a list of the specific proposed changes to IEX Rule 11.190(b)(2):

- Modify any references in the rule to a "refresh" of the display quantity to the more technically accurate term "replenish," which reflects the manner in which the System replenishes the displayed portion of a reserve order with shares taken from the non-displayed portion.

- Modify the second sentence of IEX Rule 11.190(b)(2) to add language stating that the display quantity "may be a fixed or random number of shares; and an odd, mixed, or round lot quantity," and delete the language stating that User provided display quantity "must be equal to or greater than a round lot; the System will reject a reserve order with a User instructed display quantity less than a round lot."

- Modify the fourth sentence of IEX Rule 11.190(b)(2) to add language specifying that the User instructed display quantity may be determined by "fixed or random replenishment."

- Add a new seventh sentence of IEX Rule 11.190(b)(2) stating that to enter a reserve order, a User must specify a base display quantity ("Max Floor") and may enter a replenishment value as described in subparagraph (A) of IEX Rule 11.190(b).

- Modify the eighth sentence of IEX Rule 11.190(b)(2) (formerly the seventh sentence) to add language clarifying that a reserve order with a Max Floor of a

<sup>34</sup> Because IEX is proposing to delete subparagraph (H) of the rule, while adding a new subparagraph (A), subparagraph (I) will not need to be renumbered.

round lot or greater will continue to replenish its displayed portion when the displayed portion decrements to less than one round lot. Also modify the language about how a reserve order with a Max Floor replenishes by removing the language about how it always replenishes to the original displayed quantity and adding language stating that the reserve order will replenish its displayed portion pursuant to one of the replenishment processes set forth in the newly added subparagraph (A) of the rule.

- Add a new ninth sentence of IEX Rule 11.190(b)(2) stating that a reserve order with a Max Floor of less than one round lot (an odd lot), will replenish its displayed portion when the displayed portion is decremented to zero shares, and add language stating that the reserve order will replenish its displayed portion pursuant to one of the replenishment processes set forth in the newly added subparagraph (A) of the rule.

- Add to the end of the eleventh sentence of IEX Rule 11.190(b)(2) (formerly the ninth sentence) the language that a reserve order “has the following attributes:” set forth in the subsequent subparagraphs.

- Add new subsection (A) to IEX Rule 11.190(b)(2) (“Replenishment Options”) that reads: “The following replenishment options determine the size of the displayed quantity for any reserve order that does not fully execute on entry.

- Add new subsection (A)(i) to IEX Rule 11.190(b)(2) (“Random Replenishment”) that sets forth new the random replenishment functionality, as detailed in this filing.

- Add new subsection (A)(i)(a) to IEX Rule 11.190(b)(2) (“Random Replenishment”) that sets forth new the random replenishment functionality for reserve orders with a Max Floor equal to a round lot multiple, which is detailed in this filing.

- Add new subsection (A)(i)(b) to IEX Rule 11.190(b)(2) (“Random Replenishment”) that sets forth new the random replenishment functionality for reserve orders with a Max Floor equal to less than one round lot, which is detailed in this filing.

- Add new subsection (A)(ii) to IEX Rule 11.190(b)(2) (“Fixed Replenishment”) that sets forth retention of the current replenishment functionality for all orders for which random replenishment has not been selected, as detailed in this filing.

- Renumber current subparagraphs (A) to (G) of current IEX Rule 11.190(b)(2) to subparagraphs (B) to (H).

- Remove current subparagraph (H) of current IEX Rule 11.190(b)(2).

- Modify Supplementary Material .01 (“Reserve Orders”) as follows: (i) In the first sentence, add “on entry” after the words “if a reserve order is not fully executed” for clarity; (ii) in the same sentence, remove the words “for the User instructed” that describe the display quantity and replace them with the words “based on the replenishment options sets forth in paragraph (b)(2)(A) of this IEX Rule;” (iii) in the same sentence, add the word “quantity” after the words “non-displayed” for clarity and consistency (matching the earlier phrase “displayed quantity”).

- Modify IEX Rule 11.220(a)(C)(v) to change the term “refreshed” to “replenished” and to remove the words “after receiving an execution that decrements the displayed portion of a reserve order below one round lot pursuant to” and replace them with the words “as set forth in [IEX Rule 11.190(b)(2)]” to reflect that not all reserve orders replenish when the display portion decrements to less than one round lot, but rather pursuant to the conditions set forth in the proposed changes to IEX Rule 11.190(b)(2).

#### Implementation

The Exchange will implement the proposed rule change within 90 days of filing, subject to the 30-day operative delay, and provide at least ten (10) days’ notice to Members and market participants of the implementation timeline.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>35</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>36</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, the

proposed rule change is responsive to informal feedback from Members indicating that they prefer the optionality to use Displayed Odd Lot Reserve orders to post displayed liquidity, particularly for high-priced securities. Thus, IEX believes that the proposed rule change will attract additional displayed liquidity to the Exchange and, to the extent it is successful in doing so, will benefit all market participants, thereby supporting the purposes of the Act to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange also believes that, as discussed in the Purpose section, enabling the use of Displayed Odd Lot Reserve orders will enhance opportunities for price discovery and increase the overall displayed liquidity profile on the Exchange to the benefit of all market participants.

Additionally, IEX believes that having a Displayed Odd Lot Reserve order replenish its displayed portion when it decrements to zero shares is consistent with the Act, because, as discussed in the Purpose section, it is the most workable reasonable approach to protecting investors from information leakage and potential adverse selection in a manner responsive to Members’ feedback. Accordingly, IEX believes that this approach could incentivize the use of more reserve orders thereby increasing the availability of displayed liquidity over fully non-displayed orders. For all these reasons, IEX believes that replenishing Displayed Odd Lot Reserve orders when the displayed portion decrements to zero supports investor protection and the public interest.

Further, IEX believes that the addition of the random replenishment option for reserve orders is consistent with the Act as it is designed to help to achieve the general goal of reserve orders, which is to display less than the full size of the order to avoid leaking information about the presence of a large resting reserve order which can result in market movement adverse to the reserve order. Because random replenishment results in the display quantity of a reserve order varying with each replenishment, this functionality will further reduce the ability of other market participants to detect that such order is in fact a reserve order.

Furthermore, IEX believes it is consistent with the Act to offer only fixed replenishment for reserve orders with a Max Floor of a single round lot or a mixed lot for the reasons discussed

<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

in the Purpose section. IEX believes that the proposed approach provides a reasonable approach with appropriate optionality.

IEX also notes that, as discussed in the Purpose section, the proposed random replenishment functionality is consistent with the rules of several other equities<sup>37</sup> and options<sup>38</sup> exchanges and thus the Exchange does not believe that this aspect of the proposed rule change raises any new or novel issues not already considered by the Commission.

Finally, the Exchange believes that the proposed non-substantive conforming changes to IEX Rule 11.190(b)(2) (including the supplementary material) and IEX Rule 11.220(a)(1)(C) are consistent with the protection of investors and the public interest because they will have no impact on the functionality of reserve orders, but rather simply provide consistency and clarity to how reserve orders function, thereby reducing the potential for confusion of any market participants.

#### *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 enabling IEX to offer reserve order functionality substantially similar to that offered by several other equity exchanges. As discussed in the Purpose section, the proposal is designed to incentivize the entry of additional liquidity providing orders on IEX by offering Members the flexibility of using an odd lot display quantity as well as random replenishment of the displayed quantity of a reserve order as described in the Purpose and Statutory Basis sections. Thus, IEX believes that the proposed rule change will enhance its ability to compete with other exchanges that already offer this functionality and thereby attract more reserve orders to the Exchange, to the benefit of all market participants. Moreover, other exchanges may adopt similar functionality subject to the Commission rule filing process.

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 use a Displayed Odd Lot Reserve order, and all Members would be eligible to use random or fixed replenishment for their reserve orders in the same manner. Moreover, the proposal would provide potential benefits to all Members to the extent that there is more liquidity available on IEX as a result of increased use of reserve orders.

Further, the proposed conforming edits to IEX Rule 11.190(b)(2) (including the supplementary material) and Rule 11.220(a)(1)(C) are not designed to address any competitive issue, but rather to provide additional clarity in IEX's rulebook.

#### *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 filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>39</sup> and Rule 19b-4(f)(6) thereunder.<sup>40</sup> 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>41</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>42</sup>

At any time within 60 days of the filing of this 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 will institute proceedings 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 (<http://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-2021-11 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-2021-11. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at [www.iextrading.com](http://www.iextrading.com). All comments received will be posted without change. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only

<sup>37</sup> See *supra* note 32.

<sup>38</sup> See *supra* note 22.

<sup>39</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>40</sup> 17 CFR 240.19b-4(f)(6).

<sup>41</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>42</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2021-11, and should be submitted on or before October 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93037; File No. SR-NYSE-2021-44]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rules 7.31, 7.35, 7.35B, 7.35C, 98, and 104 Relating to the Closing Auction

September 16, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 3, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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

The Exchange proposes to amend Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 Exchange proposes to amend Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction.<sup>4</sup>

##### Overview of Current Closing Auction Process

The following rules currently describe the Closing Auction process on the Exchange: Rule 7.31 (identifying the order types eligible to participate in an Auction); Rule 7.35 (general rules and definitions applicable to Auctions); Rule 7.35B (describing the process for DMM-facilitated Closing Auctions); Rule 7.35C (describing the process for Exchange-facilitated Auctions); and Rule 104 (establishing DMM obligations with respect to Closing Auctions and trading leading into the Closing Auction).

The following interest is eligible to participate in a Closing Auction:

- Unexecuted buy and sell orders resting on the Exchange Book at the end of Core Trading Hours (including DMM Orders);<sup>5</sup>

<sup>4</sup> Capitalized terms used in connection with Auctions on the Exchange are defined in Rule 7.35(a).

<sup>5</sup> For purposes of Auctions, the term “DMM Interest” is defined in Rule 7.35(a)(9) to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes the following: (i) “DMM Auction Liquidity,” which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(9)(A)); (ii) “DMM Orders,” which are orders, as defined under Rule 7.31, entered by a DMM unit (see Rule 7.35(a)(9)(B)); and (iii) “DMM After-Auction Orders,” which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see Rule 7.35(a)(9)(C)).

- Auction-Only Orders;<sup>6</sup> and
- DMM Auction Liquidity entered by the DMM in connection with facilitating the Closing Auction.<sup>7</sup>

Beginning 10 minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information that is calculated based on the interest eligible to participate in the Closing Auction.<sup>8</sup> The Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.<sup>9</sup> The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.<sup>10</sup> Beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.<sup>11</sup> The Closing Auction Imbalance Information is updated at least every second, unless there is no change to the information, and is disseminated until the Closing

<sup>6</sup> Auction-Only Orders available for the Closing Auction are defined in Rule 7.31(c)(2)(A)–(D) as the Limit-on-Close Order (“LOC Order”), Market-on-Close Order (“MOC Order”), Closing D Order, and Closing Imbalance Offset Order (“Closing IO Order”).

<sup>7</sup> The Commission recently approved proposed changes to Rule 7.35B that provide that Floor Broker Interest is no longer eligible to participate in the Closing Auction. See Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR-NYSE-2020-95) (“Floor Broker Interest Approval Order”). The term “Floor Broker Interest” is defined in Rule 7.35(a)(10) to mean orders represented orally by a Floor broker at the point of sale.

In light of the Floor Broker Interest Approval Order, the Exchange is proposing conforming changes to Rule 7.35B(j)(2) and subparagraph (A)(iii) to that Rule. Specifically, Rule 7.35B(j)(2) provides that, to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the end of Core Trading Hours, the Exchange may temporarily suspend the requirement to enter all order instructions by the end of Core Trading Hours. Because the Exchange has eliminated Floor Broker Interest at the close, the Exchange proposes to delete the phrase “or represented to a DMM orally” in Rule 7.35B(j)(2). For similar reasons, the Exchange proposes to delete the phrase “and Floor Broker Interest” in Rule 7.35B(j)(2)(A)(iii).

<sup>8</sup> See Rule 7.35B(e)(1)(A). DMM Orders, as defined in Rule 7.35(d)(9)(B), that have been entered by the DMM in advance of a Closing Auction are included in the Closing Auction Imbalance Information.

<sup>9</sup> See Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

<sup>10</sup> See Rule 7.35B(e)(3).

<sup>11</sup> See Rule 7.35(b)(1)(C)(ii).

<sup>43</sup> 17 CFR 200.30-3(a)(12).

<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.