

costs that arise due to an insufficient pool of qualified arbitrators such as the costs associated with arbitrators traveling from other hearing locations. Further, readmitting previously qualified persons increases the pool of experienced arbitrators, which strengthens the forum.

The proposal would impose no direct or indirect costs on persons previously eliminated from acting as arbitrators, new candidates for arbitrator, or parties accessing the forum.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-FINRA-2017-025 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-FINRA-2017-025. 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2017-025 and should be submitted on or before August 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-15909 Filed 7-27-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81195; File No. SR-IEX-2017-11]

**Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, To Modify the Manner in Which the Exchange Opens Trading for Non-IEX-Listed Securities**

July 24, 2017.

**I. Introduction**

On April 13, 2017, 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")<sup>1</sup> and Rule

19b-4 thereunder,<sup>2</sup> a proposed rule change to: (i) Amend IEX Rule 11.231 to modify the manner in which the Exchange opens trading for non-IEX-listed securities beginning at the start of Regular Market Hours; and (ii) amend IEX Rules 11.190 and 11.220 to specify the order types eligible to participate in the proposed opening process for non-IEX listed securities and priority of such orders. The proposed rule change was published for comment in the **Federal Register** on April 28, 2017.<sup>3</sup> On May 19, 2017, IEX filed Amendment No. 1 to the proposal. On June 9, 2017, IEX consented to an extension of time for the Commission to act on the proposal until July 5, 2017.<sup>4</sup> On June 22, 2017, IEX filed Amendment No. 2 to the proposal, which superseded and replaced Amendment No. 1 in its entirety. On June 29, 2017, IEX filed Amendment No. 3 to the proposal, which superseded and replaced Amendment No. 2 in its entirety.<sup>5</sup> Also on June 29, 2017, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 3 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

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

<sup>3</sup> See Securities Exchange Act Release No. 80514 (April 24, 2017), 82 FR 19763 ("Notice").

<sup>4</sup> See letter from Claudia Crowley, Chief Regulatory Officer, IEX, to Richard Holley, Assistant Director, Division of Trading and Markets, Commission, dated June 9, 2017.

<sup>5</sup> Amendment No. 3 revised the proposal to: (i) Provide additional clarity regarding the process for determining the opening match price; (ii) modify the definition of "Cross Tie Breaker" to account for the requirement under the National Market System Plan to Implement a Tick Size Pilot Program ("Tick Size Pilot") that certain securities be traded in nickel increments; and (iii) correct certain typographical errors. Amendment No. 3 also revised the proposal to fix an error in the proposed rule text in Amendment No. 2 and correct additional typographical errors. Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-iox-2017-11/iox201711-1831518-154558.pdf>.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 81052 (June 29, 2017), 82 FR 31377 (July 6, 2017). The Commission designated July 27, 2017 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 3

IEX has proposed to amend IEX Rule (“Rule”) 11.231 to modify the manner in which the Exchange opens trading for non-IEX-listed securities beginning at the start of Regular Market Hours (the “Opening Process”).<sup>8</sup> According to the Exchange, it will attempt to perform the Opening Process in each non-IEX-listed security pursuant to which eligible interest resting on the Exchange’s Continuous Book in the Pre-Market Session or queued for the Regular Market Session will be matched, to the greatest extent possible, at a single price at the start of the Regular Market Session.<sup>9</sup> The Exchange explained that the proposed Opening Process is designed to efficiently maximize the number of shares executed at a single price that is reflective of the broader market for the security.<sup>10</sup>

Currently, at the beginning of the Pre-Market Session, the Exchange begins accepting limit orders with certain time-in-force indicators that are immediately eligible for execution.<sup>11</sup> Separately, the Exchange accepts during the Pre-Market Session limit orders that are only eligible for execution starting with the Regular Market Session, including orders with a time-in-force of DAY or Good ‘til Extended Day (“GTX”) and pegged orders with a time-in-force of DAY. The Exchange queues these orders in sequence until the start of the Regular Market Session.<sup>12</sup> Currently, at the start of Regular Market Hours, the Exchange releases these queued orders in relative time priority, after which they are eligible for trading in the Regular Market Session, subject to User instructions and market conditions.<sup>13</sup>

Under proposed Rule 11.231(a), IEX would maintain a separate “Cross Book” on which certain types of orders would

queue prior to Regular Market Hours.<sup>14</sup> Orders on the new Cross Book, together with orders resting on the Order Book during the Pre-Market Session (*i.e.*, orders on the Continuous Book), would be eligible for execution in the new Opening Process.<sup>15</sup> Collectively, the orders eligible for execution in the Opening Process would be “Cross Eligible Orders.”<sup>16</sup> Orders on the Continuous Book and on the Cross Book would be ranked and maintained for the Opening Process pursuant to Rule 11.220(a)(2), as described below.<sup>17</sup>

Currently, Users may only submit market orders during the Regular Market Session and the System rejects market orders submitted during the Pre-Market or Post-Market Sessions.<sup>18</sup> By default, the System currently rejects market orders with a time-in-force of DAY.<sup>19</sup> Under proposed Rule 11.190(a)(2)(E), the Exchange will allow non-routable DAY market orders submitted in the Pre-Market Session to queue for the Opening Process.<sup>20</sup>

Orders resting on the Order Book will be ranked and maintained for the Opening Process based on price-display-time priority.<sup>21</sup> Once booked, a Cross

<sup>14</sup> See proposed Rule 11.231(a). Specifically, orders with a time-in-force of DAY and limit orders with a time-in-force of GTX would queue on the Cross Book and be eligible for execution in the proposed new Opening Process. See *id.*

<sup>15</sup> See *id.* The term “Order Book” has the meaning set forth in Rule 1.160(p).

<sup>16</sup> See *id.* Orders with a Minimum Quantity as defined in Rule 11.190(b)(11) would not be eligible for execution in the Opening Process and therefore would not be Cross Eligible Orders. See *id.* The Exchange has proposed to amend Rule 11.190(b)(11)(F) to specify that Minimum Quantity orders are not eligible to participate in the Opening Process. See proposed Rule 11.190(b)(11)(F).

<sup>17</sup> See proposed Rule 11.231(a)(1). For additional detail concerning the price at which pegged orders and limit orders would be ranked and eligible for execution, see *Notice, supra* note 3, at 19764.

<sup>18</sup> See Rule 11.190(a)(2)(E). The term “System” has the meaning set forth in Rule 1.160(nn).

<sup>19</sup> See Rule 11.190(a)(2)(E)(iii). The Exchange permits a User to elect for its market orders with a time-in-force of DAY to be accepted and eligible to trade or route during the Regular Market Session. Pursuant to this election, the System treats market orders marked DAY as having a time-in-force of IOC. See *id.*

<sup>20</sup> See proposed Rule 11.190(a)(2)(E). The Exchange explained that market orders with a time-in-force of DAY that are entered during the Pre-Market Session and are designated to route pursuant to Rule 11.230(c) would be rejected upon entry. See *Notice, supra* note 3, at 19764 n. 6. Additionally, the Exchange noted that orders with a time-in-force of IOC or FOK do not rest on the Order Book and therefore would be ineligible to participate in the Opening Process. See *Notice, supra* note 3, at 19764.

<sup>21</sup> See proposed Rule 11.220(a)(2). Market orders would have precedence over limit orders. Cross Eligible Orders resting on the Continuous Book would be ranked by the price at which they are resting on the Continuous Book. Cross Eligible Orders resting on the Cross Book would be ranked by their limit price, if any, except for pegged orders,

Eligible Order would maintain its time priority until one of the following occur, at which time the order would receive a new timestamp: (i) It is incremented or re-priced, in the case of an order on the Cross Book; (ii) it is re-priced by the System in response to changes in the NBBO, in the case of a pegged order on the Cross Book; or (iii) it experiences an event specified in Rule 11.220(a)(1)(C), in the case of an order on the Continuous Book.<sup>22</sup>

Under proposed Rule 11.231(b), at the start of Regular Market Hours, the Exchange will perform the Opening Process in which it matches buy and sell Cross Eligible Orders that are executable at the single price determined by IEX (the “Opening Match Price”), as described further below.<sup>23</sup> First, market orders would execute at the Opening Match Price in time priority. Second, remaining Cross Eligible Orders priced *more aggressively* than the Opening Match Price would execute in price-display-time priority at the Opening Match Price. Finally, remaining Cross Eligible Orders priced *equal* to the Opening Match Price would execute in display-time priority at the Opening Match Price. This process, called the “Opening Match,” would continue until either there is no remaining volume or there is an imbalance of Cross Eligible Orders.<sup>24</sup> Proposed Rule 11.231(c) details the Exchange’s process for determining the Opening Match Price, and will take into consideration the current pricing at away markets.<sup>25</sup> The Opening Match

which would be ranked by their current booked price. See proposed Rule 11.220(a)(2)(A). Displayed orders and displayed portions of Cross Eligible Orders would have precedence over non-displayed orders and non-displayed portions of Cross Eligible Orders at a given price. See proposed Rule 11.220(a)(2)(B).

<sup>22</sup> See proposed Rule 11.220(a)(2)(C). Pursuant to proposed Rule 11.231(a)(1)(ii) and (iii), respectively, when exercising price discretion, primary peg and discretionary peg orders would maintain time priority at their resting price, but would be prioritized behind any non-displayed interest at the Opening Match Price for the duration of the Opening Process. See proposed Rule 11.220(a)(2)(C)(v). In addition, an order from which a Minimum Quantity instruction is removed, therefore causing the order to become a Cross Eligible Order, would also receive a new timestamp. See proposed Rule 11.220(a)(2)(C)(iii).

<sup>23</sup> See proposed Rule 11.231(b).

<sup>24</sup> See proposed Rule 11.231(b)(1). AGID modifiers, as defined in Rule 11.190(e), would not be supported for executions in the Opening Match, but would be enforced on all unexecuted shares released to the Order Book following the Opening Match. See *id.*

<sup>25</sup> “Away Protected NBB” and “Away Protected NBO” would be defined as the national best bid or offer, respectively, that is a Protected Quotation and not a quotation of the Exchange. See proposed Rule 11.231(c)(1)(i). “Away Protected Bid” and “Away Protected Offer” would be defined as a Protected

<sup>8</sup> The Exchange also would retitle this rule as “Regular Market Session Opening Process for Non-IEX-Listed Securities.” The terms “Regular Market Hours” or “Regular Market Session” mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Rule 1.160(gg). The terms “Pre-Market Hours” or “Pre-Market Session” mean the time between 8:00 a.m. and 9:30 a.m. Eastern Time. See Rule 1.160(z). The terms “Post-Market Hours” or “Post-Market Session” mean the time between 4:00 p.m. and 5:00 p.m. Eastern Time. See Rule 1.160(aa).

<sup>9</sup> See *Notice, supra* note 3, at 19764.

<sup>10</sup> See *id.*

<sup>11</sup> See Rules 11.190(c)(1) (Immediate-or-Cancel), 11.190(c)(2) (Fill or Kill), 11.190(c)(5) (System Session), and 11.190(c)(6) (Good ‘til Time); see also *Notice, supra* note 3, at 19763.

<sup>12</sup> See Rules 11.190(c)(3) and (4) and 11.231(a); see also *Notice, supra* note 3, at 19763.

<sup>13</sup> See Rule 11.231(c); see also *Notice, supra* note 3, at 19763. The term “User” has the meaning set forth in Rule 1.160(qq).

would be “collared” in that it generally will have to occur within specified upper and lower threshold prices, known as the “Cross Price Constraint,” which will generally be set at the Away Protected NBB and Away Protected NBO.<sup>26</sup> If, at the time of the Opening Process, there is a crossed market in a particular security and the upper threshold price of the Cross Price Constraint is below the lower threshold price, no Opening Match would occur for that security, orders eligible to post on the Order Book would price slide in accordance with the price sliding process in IEX Rule 11.190(h), and the security would open for trading on the Exchange in accordance with prevailing market session rules.<sup>27</sup>

As described further below, in certain circumstances when needed to help determine the Opening Match Price, the Exchange will consider the price of the most current Order Collar Reference Price pursuant to Rule 11.190(f),<sup>28</sup> rounded to the nearest minimum price variant (“MPV”) or Midpoint Price<sup>29</sup> at the start of the Opening Process, whichever is closer (the “Cross Tie Breaker”).<sup>30</sup> The Exchange explained

Bid or Protected Offer, respectively, that is not a quotation of the Exchange. See proposed Rule 11.231(c)(1)(ii). “Protected Bid,” “Protected Offer,” and “Protected Quotation” have the meaning set forth in Rule 1.160(bb).

<sup>26</sup> Specifically, the upper threshold price of the Cross Price Constraint would be equal to the Away Protected NBO, except that if an Away Protected Bid is crossing an Away Protected Offer, the upper threshold price would be equal to the greater of five cents (\$0.05) or one half of a percent (0.5%) higher than the lowest Away Protected Offer. Similarly, the lower threshold price of the Cross Price Constraint would be equal to the Away Protected NBB, except that if an Away Protected Bid is crossing an Away Protected Offer, the lower threshold price would be equal to the greater of five cents (\$0.05) or one half of a percent (0.5%) lower than the highest Away Protected Bid. See proposed Rule 11.231(c)(1)(iii)(A) and (B).

<sup>27</sup> See proposed Rule 11.231(c)(1)(iii).

<sup>28</sup> The “Order Collar Reference Price” is equal to the most current of: (i) The consolidated last sale price disseminated during the Regular Market Session on the trade date; (ii) the last trade price disseminated outside of the Regular Market Session (Form T) by the SIP, which other than for the Form T designation would have been considered a valid last sale price; or (iii) if no such price exists, the prior day’s official closing price from the listing exchange. See Rule 11.190(f)(1)(A).

<sup>29</sup> “Midpoint Price” is defined as the midpoint of the NBBO. See Rule 1.160(t).

<sup>30</sup> See proposed Rule 11.231(c)(1)(iv); see also Amendment No. 3, *supra* note 5, at 27. In its proposal, the Exchange explained that if there have been no Pre-Market Session trades that qualify to update the Order Collar Reference Price and no previous official closing price is available for the security, in the interest of maintaining a fair and orderly market, the Exchange will prevent trading in the security, pursuant to Rule 11.190(f)(1)(B), by rejecting orders beginning at the start of the Pre-Market Session and will not conduct an Opening Match. See Notice, *supra* note 3, at 19765 n. 7. The Exchange further explained that trading would

that it included the rounding approach for the Cross Tie Breaker to avoid a potential inconsistency with the Tick Size Pilot if a Cross Tie Breaker in a non-nickel increment were to set the Opening Match Price for a pilot security required to be traded in nickel increments.<sup>31</sup>

Proposed Rule 11.231(c)(2) provides the Exchange’s process for determining the Opening Match Price when both an Away Protected Bid and Away Protected Offer exist for the subject security (*i.e.*, a two-sided market).<sup>32</sup> In general, the Opening Match will occur at the price that maximizes the number of shares of Cross Eligible Orders to be executed.<sup>33</sup> If multiple prices are possible, resulting in a cross price range, IEX’s rule provides a series of steps it would follow to determine the Opening Match Price.<sup>34</sup>

Alternatively, proposed Rule 11.231(c)(3) provides the Exchange’s process for determining the Opening Match Price if there is a lack of an Away Protected Bid, Away Protected Offer, or both, for the subject security at the time of the Opening Process (*i.e.*, a one-sided or zero-sided market).<sup>35</sup> In such cases, the Opening Match generally will occur at the price of the Cross Tie Breaker, subject to the Cross Price Constraint.<sup>36</sup>

begin upon receipt of the first Order Collar Reference Price for the security. See *id.*

<sup>31</sup> See Amendment No. 3, *supra* note 5, at 9–11. According to the Exchange, it proposed to apply this rounding logic to all non-IEX-listed securities, and not solely to the Tick Size Pilot securities required to trade in nickel increments, to maintain continuity in how the Exchange handles securities during the Opening Process and avoid introducing technical complexities into the System. See Amendment No. 3, *supra* note 5, at 11. The Exchange explained that non-pilot securities priced above \$1.00 would be rounded to the nearest Midpoint Price or one-penny MPV, whichever is closer. See *id.*

<sup>32</sup> See proposed Rule 11.231(c)(2).

<sup>33</sup> See proposed Rule 11.231(c)(2)(i).

<sup>34</sup> See proposed Rule 11.231(c)(2)(ii)–(iv); see also Amendment No. 3, *supra* note 5, at 27. For examples of the process for determining the Opening Match Price in a two-sided market, see Examples 1 through 4 on pages 15 to 17 of Amendment No. 3, *supra* note 5. For additional examples of the process for determining the Opening Match Price in a two-sided market when there are non-displayed orders on the Cross Book, see Example 1 on pages 17–18 of Amendment No. 3, *supra* note 5, and Examples 2 through 4 in the Notice, *supra* note 3, at 19766–67. For examples of how the Exchange would round the Cross Tie Breaker in a two-sided market, see Examples 3 and 6 on pages 13 and 14, respectively, of Amendment No. 3, *supra* note 5.

<sup>35</sup> See proposed Rule 11.231(c)(3).

<sup>36</sup> See proposed Rule 11.231(c)(3)(i)–(ii). In its proposal, the Exchange noted that in a one-sided market where there is no Away Protected NBB or no Away Protected NBO, the Cross Tie Breaker would be compared to the available threshold price of the Cross Price Constraint (*i.e.*, the Opening Match Price would be at or above the lower threshold price, or at or below the upper threshold

After the Opening Process, all remaining unexecuted interest would be released to the Order Book for continuous trading or cancelled in accordance with the terms of the order.<sup>37</sup> Routable orders that are released to the Order Book would be routed in accordance with IEX Rule 11.230(c)(3), subject to the orders’ instructions.<sup>38</sup>

If a disruption occurs that prevents the execution of the Opening Process described above, IEX will apply the contingency procedures established in proposed Rule 11.231(d). Specifically, IEX would publicly announce that no Opening Process will occur, all orders on the Order Book would be cancelled, and IEX would open the security for trading without an Opening Match.<sup>39</sup>

If a security is subject to a halt, suspension, or pause in trading during the Pre-Market Session, the Exchange would not accept orders in the security, including for queuing in the Cross Book and participation in the Opening Process.<sup>40</sup> Orders submitted during the halt would be rejected, while orders resting on the Order Book would remain unless cancelled by the User, but would be unavailable for trading during the halt.<sup>41</sup> If the halt, suspension, or pause remained in effect at the start of Regular Market Hours, the Opening Process would not start at the normally scheduled time, but would be conducted once the security resumes trading.<sup>42</sup>

Under proposed Rule 11.231(f), pursuant to Rule 611(b)(3) of Regulation NMS and section VI(D)(6) of the Tick

price of the Cross Price Constraint, as applicable). However, in a zero-sided market, the Opening Match Price would be the Cross Tie Breaker. See Notice, *supra* note 3, at 19767 n. 9. For examples of the process for determining the Opening Match Price in a one-sided or zero-sided market, see Examples 1 through 3 on pages 18 to 19 of Amendment No. 3, *supra* note 5. For examples of how the Exchange would round the Cross Tie Breaker in a one-sided or zero-sided market, see Examples 1, 2, 4, and 5 on pages 12 to 14 of Amendment No. 3, *supra* note 5.

<sup>37</sup> See proposed Rule 11.231(b)(2). Cross Eligible Orders may remain unexecuted, in whole or in part, due to an imbalance of Cross Eligible Orders during the Opening Process. See *id.* Unexecuted Cross Eligible Orders that are priced at or outside of the Cross Price Constraint (*i.e.*, buy orders at or above the Cross Price Constraint or sell orders at or below the Cross Price Constraint) would price slide pursuant to IEX Rule 11.190(h). See *id.*

<sup>38</sup> See *id.*

<sup>39</sup> See proposed Rule 11.231(d). In its proposal, the Exchange noted that it would disseminate a System Status Alert, which would automatically send an email alert, twitter update, and text message to announce that no Opening Process would occur and publish such information on IEX’s Web site. See Notice, *supra* note 3, at 19767 n. 12.

<sup>40</sup> See proposed Rule 11.231(e).

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

Size Pilot, orders executed in the Opening Process would constitute a single-priced opening transaction by the Exchange and would be allowed to trade-through or trade-at the price of any other Trading Center's Manual or Protected Quotations.<sup>43</sup>

Finally, the Exchange has proposed to make a minor conforming change to the language used to reference LULD Price Bands in Rule 11.190(a)(2).<sup>44</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>45</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>46</sup> 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 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 Exchange has stated that its proposed Opening Process for non-IEX-listed securities is designed to match at a single price all eligible buy and sell orders that are resting on the Exchange's order book and available for continuous trading during the Pre-Market Session, as well as orders that have been queued until Regular Market Hours.<sup>47</sup> According to the Exchange, the proposed Opening Process will provide for orderly and timely openings.<sup>48</sup>

The Commission believes that the proposed Opening Process is designed to open Regular Market Hours trading on the Exchange in non-IEX-listed securities in a fair and orderly manner, which is consistent with the protection of investors and the public interest. Currently, the Exchange does not conduct an opening process for non-listed-IEX securities that is designed to match marketable buy and sell interest

at a single price; rather, at the beginning of Regular Market Hours, the Exchange handles orders that have been queued during the Pre-Market Session by releasing them, according to their relative time priority, into continuous trading as incoming orders.<sup>49</sup> To the extent the Exchange's proposal helps facilitate an orderly transition to regular trading in a fair and transparent manner, the Commission believes that it is consistent with the Act.

The Commission also believes that the proposed rule change is consistent with the Act because it is designed to open Regular Market Hours trading in each non-IEX-listed security by matching as much interest as it can at a price determined through an objective process set forth in its proposed rule. The Commission notes that, under proposed Rule 11.231(c)(2), the Exchange would attempt to set the Opening Match Price in a two-sided market at the price where the maximum number of shares of Cross Eligible Orders would be executed, taking into account the prices and relative volume balance of eligible buy and sell orders resting on the Exchange in the particular security.<sup>50</sup> In the event that a single Opening Match Price cannot be established in a two-sided market based on the eligible interest resting on the Exchange, or in the event that there is a one-sided or zero-sided market, the Exchange would rely on the Cross Tie Breaker price to determine the Opening Match Price.<sup>51</sup> The Commission believes that these aspects of the proposed Opening Process are consistent with Section 6(b)(5) of the Act in that they are designed to promote just and equitable principles of trade and protect investors.

Further, the Commission notes that, based on the Exchange's proposed definition of Cross Tie Breaker,<sup>52</sup> which incorporates the Exchange's current definition of Order Collar Reference Price,<sup>53</sup> the Exchange effectively would rely on the most recent last sale price to determine the Opening Match Price when a single Opening Match Price cannot be determined based on the Cross Eligible Orders resting on the Exchange in a two-sided market, or when there is a one-sided or zero-sided market. The Commission also notes that the Cross Tie Breaker price (*i.e.*, the most recent last sale price) would be rounded as proposed for certain non-

IEX listed securities subject to the Tick Size Pilot in order to ensure that the Opening Match occurs at a price that is permissible under the pilot, as well as for other non-pilot non-IEX-listed securities in order to maintain continuity and reduce complexity in the Exchange's handling of securities during the Opening Process.<sup>54</sup> The Commission believes that relying on the most recent last sale price in these circumstances, and rounding that price as necessary, is consistent with the Act, including Section 6(b)(5) of the Act.

The Commission also notes that the Exchange has proposed to apply a Cross Price Constraint to prevent the Opening Match from occurring at a price that would be outside the Away Protected NBB and/or NBO, as applicable. The Commission believes that this collar feature of the proposed Opening Process is reasonably designed to ensure that the Opening Match occurs at a price that is within the broad market price for the security, and therefore should help to protect investors and remove impediments to and perfect the mechanism of a national market system, consistent with Section 6(b)(5) of the Act.

In addition, the Commission believes that the Exchange's proposed order handling during the Opening Process is consistent with the Act. The Commission notes that the Exchange's proposed priority hierarchy for the ranking and execution of opening-cross-eligible orders is consistent with the Exchange's order execution priority hierarchy during continuous trading.<sup>55</sup> Further, the Exchange has proposed to handle unexecuted opening-cross-eligible orders consistent with their terms, subject to the price sliding provisions of Rule 11.190(h) as appropriate.<sup>56</sup> The Commission believes that these aspects of the proposal provide continuity with the Exchange's order handling practices and should reduce the potential for investor confusion when the Exchange transitions to continuous trading.

The Commission also notes that the Exchange believes that allowing non-routable DAY market orders to be submitted and queue for the Opening Process will provide members with greater flexibility.<sup>57</sup> The Commission

<sup>43</sup> See proposed Rule 11.231(f).

<sup>44</sup> See proposed Rule 11.190(a)(2).

<sup>45</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>46</sup> 15 U.S.C. 78f(b)(5).

<sup>47</sup> See Notice, *supra* note 3, at 19764.

<sup>48</sup> See Notice, *supra* note 3, at 19767.

<sup>49</sup> See Notice, *supra* note 3, at 19763.

<sup>50</sup> See proposed Rule 11.231(c)(2)(i) and (ii); see also Amendment No. 3.

<sup>51</sup> See proposed Rules 11.231(c)(2)(iii) and 11.231(c)(3); see also Amendment No. 3.

<sup>52</sup> See proposed Rule 11.231(c)(1)(iv); see also Amendment No. 3.

<sup>53</sup> See Rule 11.190(f).

<sup>54</sup> See Amendment No. 3.

<sup>55</sup> See proposed Rules 11.220(a)(2), 11.231(a)(1), and 11.231(b)(1); see also Notice, *supra* note 3, at 19768.

<sup>56</sup> See proposed Rule 11.231(b)(2).

<sup>57</sup> See proposed Rules 11.190(a)(2)(E) and 11.231(a); see also Notice, *supra* note 3, at 19769. The Commission notes that market orders currently may only be submitted to the Exchange in the

believes that allowing non-routable DAY market orders to queue for the Opening Process may accommodate market participants that use DAY market orders on other exchanges and therein may help promote the orderly submission of those orders to the Exchange in advance of the Regular Market Session.

Further, the Commission believes that the components of the proposal that are designed to address what would occur if a disruption prevents the execution of the opening process,<sup>58</sup> and what would occur if a security is subject to a halt, suspension, or pause in trading during the Pre-Market Session,<sup>59</sup> set forth procedures that are reasonably designed to protect investors and the public interest, and remove impediments to and perfect the mechanism of a national market system, consistent with Section 6(b)(5) of the Act.<sup>60</sup>

Finally, the Commission notes that another national securities exchange conducts an opening process for non-listed securities,<sup>61</sup> and the Commission received no comments on the Exchange's proposed rule change.

#### IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 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-2017-11 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

Regular Market Session, and are rejected if submitted during the Pre-Market (or Post-Market) Session. See Notice, *supra* note 3, at 19763.

<sup>58</sup> See proposed Rule 11.231(d).

<sup>59</sup> See proposed Rule 11.231(e).

<sup>60</sup> The Commission believes that the other components of the proposal, including proposed Rule 11.231(f) and the minor conforming change to the language used to reference LULD Price Bands in Rule 11.190(a)(2), are consistent with the Act.

<sup>61</sup> See, e.g., BZX Rule 11.24. The Commission notes that the BZX opening process for non-listed securities is largely similar to what the Exchange has proposed, but differs in that it is designed to match eligible orders at the midpoint of the NBBO whereas the Exchange's proposed Opening Match, while bound by the Away Protected NBBO, could occur at a price other than the midpoint of the Away Protected NBBO.

All submissions should refer to File Number SR-IEX-2017-11. 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-11, and should be submitted on or before August 18, 2017.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of the notice of Amendment No. 3 in the **Federal Register**. The Commission believes that the proposed changes to the description of the process for determining the Opening Match Price that were included in Amendment No. 3 add clarity to the price determination process without materially changing the proposal from what the Exchange originally filed. Additionally, the Commission believes that the proposed addition of a rounding process for the Cross Tie Breaker to prevent certain Tick Size Pilot securities from trading in an impermissible increment eliminates a potential conflict between the Tick Size Pilot and the Opening Process. Moreover, the Commission believes that applying the rounding process to all non-IEX-listed securities will allow for consistent handling of securities in the Opening

Process and avoid introducing unnecessary technical complexities. The Commission does not believe that any of the changes proposed in Amendment No. 3 introduce novel concepts, but rather add detail to better reflect in the proposed rule text how the proposed Opening Process would work for non-IEX-listed securities, and also reconciles the proposed Opening Process with the tick-size requirements of the Tick Size Pilot. Accordingly, for the reasons noted above, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>62</sup>

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>63</sup> that the proposed rule change (SR-IEX-2017-11), as modified by Amendment No. 3 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>64</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-15908 Filed 7-27-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81193; File No. SR-MIAX-2017-35]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX Options Rules 404, 506, 806, and 1701

July 24, 2017.

Pursuant to the provisions of 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 July 19, 2017, Miami International Securities Exchange, LLC ("MIAX Options" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

<sup>62</sup> 15 U.S.C. 78s(b)(2).

<sup>63</sup> *Id.*

<sup>64</sup> 17 CFR 200.30-3(a)(12).

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

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