

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96915; File No. SR-IEX-2023-03)

February 14, 2023

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 1.160

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 7, 2023, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III 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,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to amend IEX Rule 1.160.

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷

The text of the proposed rule change is available at the Exchange’s website at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4.

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 these statement 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 Exchange proposes to amend IEX Rule 1.160(y) “Person Associated with a Member or Associated Person of a Member,” to align those terms to the definition of the same terms in FINRA’s By-Laws⁸ with respect to Statutory Disqualifications.⁹ Currently, IEX Rule 1.160(y) defines the terms “Person Associated with a Member” or “Associated Person of a Member” as

any partner, officer, director, or branch manager of a Member (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Member, or any employee of such Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.¹⁰

Therefore, under IEX’s current rules, an entity that is under common control of a Member is considered a Person Associated with a Member or Associated Person of a Member. Because IEX requires Members to submit a MC-400A application for continuance as a member

⁸ See FINRA Regulation, Inc. By-laws, Article I, paragraph (ee).

⁹ The term “Statutory Disqualification” means any statutory disqualification as defined in Section 3(a)(39) of the Act. See IEX Rule 1.160(mm).

¹⁰ See IEX Rule 1.160(y) (emphasis added).

if any Person Associated with the Member becomes subject to a Statutory Disqualification¹¹, IEX's current rules require Members to file MC-400A applications for affiliates under common control that would be subject to Statutory Disqualification under the securities laws.

By contrast, FINRA does not define "Person Associated with a Member" or "Associated Person of a Member" as including affiliates under common control of the FINRA member.¹² Thus, a firm that is both an IEX Member and a FINRA member, which has an affiliate under common control that would be subject to Statutory Disqualification under the securities laws, is required to file a Form MC-400A with IEX but not with FINRA.

The Exchange therefore proposes to amend IEX Rule 1.160(y) to add a new subparagraph (2) defining Person Associated with a Member or Associated Person of a Member in connection with Section 3(a)(39) of the Act¹³ using language that matches the FINRA definition (though with an internal cross-reference to IEX's Rule 8.210 in place of FINRA Rule 8210). By adopting the definition substantially identical to the FINRA definition for the purposes of Statutory Disqualification, the Exchange would align its application of Statutory Disqualifications with that of FINRA. The proposed amendment would avoid potentially different outcomes for members of both FINRA and IEX with respect to ineligibility for membership and association. IEX also notes that the Nasdaq Stock Market LLC ("Nasdaq") General 3 Rule 1002¹⁴ was amended by Nasdaq to align with FINRA's definitions for purposes

¹¹ See IEX Rule 9.522(b)(1)(B).

¹² FINRA Regulation, Inc. By-laws, Article I, paragraph (ee) defines the terms "person associated with a member" or "associated person of a member" in relevant part as: "(2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD." (emphasis added).

¹³ 15 U.S.C. 78c(a)(39).

¹⁴ See Nasdaq General 3 Rule 1002.

of Statutory Disqualifications.¹⁵

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁶ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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's proposal to adopt FINRA's definitions of Person Associated with a Member or Associated Person of a Member, as provided within FINRA Regulation, Inc. By-laws, Article I, paragraph (ee), for purposes of Statutory Disqualification pursuant to Section 3(a)(39) of the Act¹⁸ is consistent with the Act. Aligning these terms for purposes of Statutory Disqualifications would avoid potentially different outcomes for members of both FINRA and IEX with respect to ineligibility for membership and association as a result of Statutory Disqualification. Additionally, it will remove impediments to a free and open market by providing a consistent Statutory Disqualification review process for industry members seeking to continue their membership after an affiliate's Statutory Disqualification.

The Exchange believes the proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by ensuring market participants that are members of both FINRA and IEX are held to the same standard with respect to Statutory

¹⁵ See Securities Exchange Act Release No. 94473 (March 18, 2022), 87 FR 16804 (March 24, 2022) (SR-NASDAQ-2022-022).

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78c(a)(39).

Disqualification. Additionally, the Exchange notes that this proposal raises no issues not already considered by the Commission, because the Commission has already allowed other SROs (FINRA and Nasdaq) to use the same language as that proposed by IEX when applying the definitions of Person Associated with a Member or Associated Person of a Member, for purposes of Statutory Disqualifications.

The Exchange believes its proposal will promote just and equitable principles of trade and protect investors and the public interest by ensuring market participants that are members of both FINRA and IEX are held to the same standard with respect to Statutory Disqualification.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA. Aligning the terms "person associated with a member" or "associated person of a member" with paragraph (ee) of Article I, Definitions, of FINRA's By-Laws would avoid potentially different outcomes for members of both FINRA and IEX with respect to ineligibility for membership and association as a result of Statutory Disqualification and ensure that all FINRA and IEX members are held to the same standard with respect to Statutory Disqualification. Consequently, the Exchange does not believe that the proposed change implicates competition at all.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section

19(b)(3)(A)¹⁹ of the Act and Rule 19b-4(f)(6)²⁰ thereunder. 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

The Exchange's proposal to amend IEX Rule 1.160(y) and define the terms "person associated with a member" or "associated person of a member" as provided within FINRA By-Law Article I, paragraph (ee), for purposes of Statutory Disqualification pursuant to Section 3(a)(39) of Act,²¹ does not significantly affect the protection of investors or the public interest as the proposal would align IEX's application of Statutory Disqualification with FINRA's process and avoid potentially different outcomes for members of both FINRA and IEX with respect to ineligibility for membership and association. Additionally, this proposal does not impose any significant burden on competition as the proposal would ensure that all FINRA and IEX members are held to the same standard with respect to Statutory Disqualification.

In addition, the Exchange provided the Commission with written notice of its 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.²²

At any time within 60 days of the filing of the 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

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 15 U.S.C. 78c(a)(39).

²² 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)²³ of the Act 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 e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2023-03 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-2023-03. This file number should be included on the subject line if e-mail 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

²³ 15 U.S.C. 78s(b)(2)(B).

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 also will be available for inspection and copying at the principal office of the Exchange. 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 information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2023-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,
Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).