

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79670; File No. SR-IEX-2016-22)

December 22, 2016

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Retention of Jurisdiction Over Members and Persons Associated with Members Upon Termination, Revocation, or Cancellation of Membership or Association Thereof.

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 December 16, 2016, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “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 Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend Rule 2.230, which is currently reserved, to specify the circumstances under which the Exchange retains disciplinary jurisdiction over a Member or persons associated with a Member upon termination, revocation, or cancellation of membership or association thereof. The Exchange has

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.

designated this proposal as “non-controversial” and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

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 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

IEX proposes to amend Rule 2.230, which is currently reserved, to specify the circumstances under which the Exchange retains disciplinary jurisdiction over a Member or persons associated with a Member upon termination, revocation or cancellation of membership or association thereof. As a national securities exchange and self-regulatory organization (“SRO”), IEX is subject to several provisions of the Act with respect to rule enforcement and discipline of Members and persons associated with Members. First, Section 6(b)(1)⁷ of the Act requires the Exchange to enforce compliance by its members and persons associated with its members with applicable provisions of the Act, the rules and regulations thereunder and

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ 15 U.S.C. 78f(b)(1).

Exchange rules. In addition, Section 6(b)(6)⁸ of the Act requires that IEX rules must provide that its members and persons associated with its members shall be appropriately disciplined for such violations of applicable provisions of the Act, the rules and regulations thereunder and Exchange rules (i.e., rule violations). And finally, Section 6(b)(7)⁹ of the Act provides that IEX rules must provide a fair procedure for the disciplining of members and persons associated with members for rule violations.

In furtherance of these obligations, IEX has retained FINRA, pursuant to a regulatory services agreement (“RSA”) and subject to IEX oversight, to perform certain regulatory functions on behalf of IEX, including surveillance and examination of trading activity on IEX to identify rule violations, and related investigations of and disciplinary actions against IEX members and persons associated with members for any such rule violations. Investigations and disciplinary actions are conducted in accordance with Chapters 8 and 9 of the IEX Rules. Chapter 8 contains provisions related to investigations and sanctions, that require, among other things, that a Member, person associated with a Member or any other person subject to IEX’s jurisdiction provide information or testimony or permit an inspection and copying of books, records, or accounts to the Exchange upon request.¹⁰ Rule 8.310 provides for the imposition of sanctions,¹¹ after compliance with Chapter 9 of IEX Rules, on a Member or person associated with a Member for rule violations, as well as for any neglect or refusal to comply with an order, direction, or decision issued under the IEX Rules. Chapter 9 of the IEX Rules contains the Code

⁸ 15 U.S.C. 78f(b)(6).

⁹ 15 U.S.C. 78f(b)(7).

¹⁰ See Rule 8.210.

¹¹ Specified sanctions include censure, fine, membership suspension or expulsion, cease and desist order, or other fitting sanction.

of Procedure and includes proceedings for, among other things, disciplining a Member or person associated with a Member.

IEX Rule 2.190 governs a member's right to voluntarily terminate its IEX membership. The rule provides that a termination shall not take effect until 30 days after certain specified conditions have been satisfied, including: any Exchange investigation or disciplinary action brought against the Member has reached a final disposition and any examination by the Exchange of such Member is completed and all exceptions noted have been reasonably resolved.¹² These provisions are designed to assure that FINRA, on IEX's behalf, can complete and resolve or finalize a pending regulatory matter involving a Member that is open at the time a Member seeks to terminate its membership and thus that a Member cannot terminate its membership to avoid a regulatory or disciplinary matter.

However, IEX Rule 2.190 does not fully address the possibility that FINRA, on behalf of the Exchange, may need to conduct an investigation and/or initiate a disciplinary action with respect to a former Member or person associated with a Member for rule violations that occurred prior to termination of membership or association thereof, but were not known to FINRA at that time. Accordingly, IEX proposes to amend Rule 2.230 to add a retention of jurisdiction provision. Specifically, Rule 2.230(a) would provide that an IEX Member whose membership is revoked, terminated or cancelled shall continue to be subject to the filing of a complaint under IEX rules based upon conduct which commenced prior to the effective date of the revocation, termination or cancellation. Any such complaint, however, shall be filed within two years after the effective date of revocation, termination or cancellation. Proposed Rule 2.230(b) applies to persons associated with a Member and provides that a person whose association with a Member

¹² Rule 2.190 provides that the Exchange Board may declare a resignation effective at an earlier time.

has been revoked, terminated or cancelled and who is no longer associated with any Member shall continue to be subject to the filing of a complaint under IEX rules based upon conduct that commenced prior to the termination, revocation or cancellation or upon such person's failure, while subject to IEX's jurisdiction to provide information requested by IEX pursuant to IEX rules. Any such complaint must be filed within: two years after the effective date of termination of registration with IEX pursuant to Rule 2.160(r)(1), provided however that any amendment to a notice of termination filed pursuant to Rule 2.160(r)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection; two years after the effective date of revocation or cancellation of registration pursuant to IEX rules; or in the case of an unregistered person, two years after the date upon which such person ceased to be associated with the member. This proposed rule change is substantially similar to Article IV, Section 6 of the FINRA By-Laws with respect to members and Article V, Section 4 with respect to persons associated with a member.¹³

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁴ in general and furthers the objectives of Section 6(b)(1)¹⁵ of the Act in that it is designed to enable the Exchange to enforce compliance by its members and persons associated with its members with applicable provisions of the Act, the rules and regulations thereunder and Exchange rules. In addition, the Exchange believes that the proposed rule change is consistent

¹³ There are minor differences related to terminology. In addition, provisions substantially similar to Article V, Section 4(b) of the FINRA By-Laws related to failure to comply with an arbitration award are contained in IEX Rule 9.554(a).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(1).

with Section 6(b)(6)¹⁶ of the Act in that it is designed to provide authority to the Exchange to appropriately discipline former members and persons associated with its members for such rule violations that occurred during membership or association with a member. Further, the Exchange believes that the proposed rule change is consistent with Section 6(b)(7)¹⁷ of the Act because it would support a fair procedure for the disciplining of members and persons associated with members for rule violations. Specifically, IEX believes that it is appropriate to retain jurisdiction over members and persons associated with members for a reasonable period of time for rule violations that occurred while the firm was a Member or an individual was associated with a member. IEX believes that two years is reasonable in that it provides adequate time for FINRA, on its behalf, to file a complaint without subjecting former members and persons formerly associated with members to an excessively long period of time to learn of a disciplinary matter. The Exchange notes that FINRA, New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) also provide a two-year retention of jurisdiction period.¹⁸

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, as amended. The proposed rule change is not designed to address any competitive issues but rather to provide for appropriate retention of jurisdiction of former members and persons associated with a member.

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

¹⁶ 15 U.S.C. 78f(b)(6).

¹⁷ 15 U.S.C. 78f(b)(7).

¹⁸ See Article IV, Section 6 of the FINRA By-Laws, NYSE Rule 8130, and Nasdaq Rule 1031(f).

Written comments 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.

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay as the proposed implementation of the two-year retention of jurisdiction is consistent with the rules of other SROs and will enable the Exchange to immediately retain jurisdiction over a register representative who may have been engaged in unlawful activity. Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative date so that the proposal may take effect upon filing.²³

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ 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 email to rule-comments@sec.gov. Please include File Number SR-IEX-2016-22 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.

All submissions should refer to File Number SR-IEX-2016-22. This file number should be included in 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

²⁴ 15 U.S.C. 78s(b)(2)(B).

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 Section, 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. 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-2016-22 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.²⁵

Robert W. Errett
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).