

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101779; File No. SR-IEX-2024-26)

November 29, 2024

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 2.160(a) to Better Reflect the Process for a Broker-Dealer to Become a Member (or Continue as a Member) of the Exchange Notwithstanding the Member (or a Person Associated with the Member) Being Subject to a Statutory Disqualification

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 November 19, 2024, 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 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,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 2.160(a) to better reflect the process for a broker-dealer to become a Member (or continue as a Member) of the Exchange notwithstanding the Member (or a person associated with the Member) being subject to a statutory disqualification. The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided

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).

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 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 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 Exchange proposes to amend IEX Rule 2.160(a) to better reflect the process for a broker-dealer firm to become a Member⁸ (or continue as a Member) of the Exchange notwithstanding the Member (or a person associated with the Member) being subject to a statutory disqualification.⁹

Section 3(a)(39) of the Act defines the term "statutory disqualification" and the circumstances that can cause a person (either a Member, or a person associated with a Member)

⁷ 17 CFR 240.19b-4.

⁸ See IEX Rule 1.160(s).

⁹ Additionally, and as discussed further below, IEX is proposing this rule change to address a situation of first impression for the Exchange in which it is evaluating a firm's application for membership on the Exchange while that firm is in the process of eligibility proceedings related to a statutory disqualification with FINRA and other SROs of which the firm is already a member.

to be subject to a statutory disqualification.¹⁰ For example, a broker-dealer is subject to a statutory disqualification if the Commission finds that the firm “willfully aided, abetted, counseled, commanded, induced, or procured the violation of another person of the [Exchange Act]... or failed to reasonably supervise another person who commits such a violation.”¹¹ As discussed below, absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization (“SRO”).

Notwithstanding the above, there is a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification.¹² In particular, SEC Rule 19h-1¹³ describes several ways an SRO may seek relief for a member firm (or prospective member firm) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a “19h-1 Notice”). For example, a 19h-1 Notice does not need to be filed by an SRO if the firm subject to a statutory disqualification is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.¹⁴

Several IEX rules address statutory disqualifications and the process for seeking relief from those disqualifications. For example, IEX Rule 2.160(a)(3) states that “No person may

¹⁰ 15 USC 78c(a)(39).

¹¹ 15 USC 78o(b)(4)(E), which is cited in 15 USC 78c(a)(39)(F).

¹² See FINRA Regulatory Notice 09-19 (“Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications”).

¹³ 17 CFR § 240.19h-1

¹⁴ Exchange Act Rule 19h-1(a)(3), 17 CFR 240.19h-1(a)(3).

become a Member or continue as a Member in any capacity on the Exchange where such person is subject to a statutory disqualification, except that a person may become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act¹⁵, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member.” And IEX Rule 9.522 describes the process by which a Member or a person associated with a Member may continue as a Member of IEX notwithstanding being subject to a statutory disqualification. Notably, several sections of IEX Rule 9.522 mirror sections of Rule 19h-1; for example, IEX Rule 9.522(e)(1)(C)(i) mirrors Rule 19h-1(a)(3)(i) in that both describe how an SRO like IEX need not file a 19h-1 Notice with the Commission for a Member subject to a statutory disqualification, if the firm is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.¹⁶

A broker-dealer firm that recently became subject to a statutory disqualification applied for IEX membership. In the course of reviewing this membership application, IEX identified that its rules do not specifically address this situation, which has not previously occurred with respect to IEX. Specifically, the Exchange believes that its rules regarding the process by which a prospective Member that is subject to a statutory disqualification can be approved for membership on IEX notwithstanding the statutory disqualification could be enhanced to provide additional clarity and more clearly align with the processes set forth in Rule 19h-1 for a membership applicant that is subject to a statutory disqualification. IEX notes that other exchanges rules do address this issue -- specifically BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA, amended their respective rules in 2016 to provide more clarity as to the

¹⁵ See 17 CFR 240.19d-1, 17 CFR 240.19d-2, 17 CFR 240.19d-3, and 17 CFR 240.19h-1.

¹⁶ See IEX Rule 9.522(e)(1)(C)(i) and Rule 19h-1(a)(3)(i).

authority of each Exchange to determine whether to admit a prospective Member that is subject to a statutory disqualification.¹⁷ The 2016 rule change filings of these exchanges also amended several other aspects of their application procedures, but IEX is only seeking to harmonize its rules insofar as they apply to Members and prospective Members (and associated person of the Members) that are subject to a statutory disqualification in order to address the membership application described herein.¹⁸

Accordingly, IEX proposes to amend its rules to align them with those of these other exchanges, specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹⁹

First, IEX proposes to add Supplementary Material .01 to IEX Rule 2.160(a), to provide that the Exchange could approve an applicant for membership (or association with a Member) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit a Member or associated person of a Member to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h-1(a)(3), would provide as follows:

¹⁷ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR-BatsBZX-2016-67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR-BatsBYX-2016-28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR-BatsEDGA-2016-23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR-BatsEDGX-2016-59).

¹⁸ The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which IEX believes are adequately addressed in other IEX Rules. See, e.g., IEX Rules 2.160 and 2.170 which address membership restrictions and agreements.

¹⁹ The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM-2040-08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

Statutory Disqualification Proceedings Pending Before Another SRO

The Exchange may waive the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of this Rule with respect to a prospective IEX Member, existing IEX Member, or associated person of such Member or prospective Member, the Exchange shall determine whether the Exchange will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the member or associated person.

IEX notes that this Supplementary Material is substantively identical to Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for the addition of some language to clarify that the new supplementary material would apply to both prospective and existing IEX Members.

Second, IEX proposes a conforming amendment to IEX Rule 2.160(a)(3) to remove the language that states that a person subject to statutory disqualification may not become a Member unless, pursuant to Rules 19d-1, 19d-2, 19d-3, and 19h-1 of the Act, the Commission has issued an order providing relief from such disqualification. IEX makes this proposed rule change because, as discussed above with respect to Rule 19h-1, not every statutory disqualification requires an SRO to make a filing under Rule 19h-1 of the Act and not all filings require a Commission order. As proposed the rule will now read: “No person may become a Member or continue as a Member in any capacity on the Exchange where such person is subject to a statutory disqualification.” As discussed above and in Item 7, below, IEX is making this proposed rule change, and seeking a waiver of the 30-day operative delay for the rule change, in order to address an unusual situation in which a firm subject to a statutory disqualification seeks to become an IEX Member during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

IEX believes that these proposed rule changes would appropriately align IEX's rules with the SEC's rules regarding statutory disqualifications and enable a consistent process across IEX and several other SROs to make appropriate SEC filings with respect to a prospective Member that is subject to a statutory disqualification. Specifically, in the event that an applicant for membership is subject to a statutory disqualification, IEX will be able to assess whether to approve the applicant and join in any Rule 19h-1 Notices filed on behalf of the prospective Member once approved for IEX membership, as consistent with the public interest and protection of investors. The Exchange notes that in assessing the statutory disqualification of a Member (or prospective Member), it must act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.²⁰ Further, any prospective Member that has been denied membership in the Exchange or barred from becoming associated with a Member is entitled to certain due process pursuant to Chapter 9 of the Exchange's rules, which includes, but is not limited to, potential review by the Commission.²¹

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²² of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act²³ 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

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Chapter 9 of the Exchange's Rules.

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(5).

investors and the public interest.

The Exchange believes that the proposed rule changes are consistent with the requirements above. Specifically, the Exchange believes the proposed changes would better align IEX's rules with the SEC's rules regarding statutory disqualifications and enable a consistent process across IEX and several other SROs to make appropriate SEC filings with respect to a prospective Member that is subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification.²⁴

Additionally, the Exchange believes that the clarity this rule change will provide to Members, prospective Members, and persons associated with Members or prospective Member will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Furthermore, the Exchange believes it is reasonable to remove the references to Rules 19d-1, 19d-2, 19d-3, and 19h-1, as well as the language regarding a Commission order providing relief from a statutory disqualification from Rule 2.160(a)(3), because, as discussed in the Purpose section, not every statutory disqualification requires an SRO to make a filing pursuant to Commission Rule 19h-1 to allow a Member or person associated with a Member to continue working in the securities industry notwithstanding a statutory disqualification, and not every filing pursuant to Rule 19h-1 requires a Commission order. Further, these proposed changes would align IEX's Rule 2.160(a)(3) with the equivalent rules of BOX, Cboe BZX, Cboe BYX, Cboe EDGA, and Cboe EDGX.

²⁴ In a 2009 order approving a similar rule change proposal filed by CBOE, the Commission found that the proposed rule change was consistent with Section 6(b)(5) of the Act because it enabled CBOE to more efficiently administer its statutory disqualification program. See Securities Exchange Act Release No. 60370 (July 23, 2009), 74 FR 37758 (July 29, 2009) (SR-CBOE-2009-033).

Finally, as noted in the Purpose section, this rule change is substantively identical to rules of BOX, Cboe BZX, Cboe BYX, Cboe EDGA, and Cboe EDGX.²⁵ Thus, IEX does not believe that this proposal raises any new or novel issues that have not already been considered by the Commission.

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 other exchanges and with the Commission's approach to handling firms that are subject 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

Because the foregoing 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 Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷

²⁵ See *supra* notes 17 and 18. As noted in the Purpose section, IEX only seeks to mirror the language in these other exchanges' rules with respect to current or prospective Members that are subject to a statutory disqualification.

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and

A proposed rule change filed under Rule 19b-4(f)(6)²⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. IEX has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. IEX states that waiving the 30-day delay in this manner would allow IEX to appropriately address a pending membership application, and would permit the Exchange to harmonize the aspects of its statutory disqualification-related rules that are the subject of this proposed rule change filing with the other exchanges described herein upon effectiveness of the proposed rule filing. Further, IEX believes that the waiver of the operative delay will avoid any potential confusion that may otherwise occur on the part of Members and applicants as to the applicable rules governing statutory disqualifications. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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 to determine whether the proposed rule should be

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. FINRA has satisfied this requirement.

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-26 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-2024-26. 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 (<https://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 also will be available for inspection and copying at the

principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2024-26 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

³⁰ 17 CFR 200.30-3(a)(12).