

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84320; File No. SR-IEX-2018-19)

September 28, 2018

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 2.160 Related to the Qualification and Registration Requirements for Associated Persons of a Member and to Delete Rule 2.150 which is Obsolete.

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 September 25, 2018, 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 Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to amend IEX Rule 2.160 to (i) harmonize IEX rules with certain Financial Industry Regulatory Authority, Inc. (“FINRA”) rules related to qualification and registration requirements for associated persons of a Member⁶ which are pending effectiveness; (ii) specify when associated

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 “Person Associated with a Member” or “Associated Person of a Member” mean [sic]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,

persons of a Member are required to be registered with the Exchange; and (iii) delete Rule 2.150 related to a temporary membership application process and waive-in, which is obsolete. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁷ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁸

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 statement [sic] 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 is proposing to amend Rule 2.160 to (i) harmonize with certain FINRA rules related to qualification and registration requirements for associated persons of a Member which are pending effectiveness; (ii) specify when associated persons of a Member are required to be registered with the Exchange; and (iii) delete Rule 2.150 related to a temporary

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. See IEX Rule 1.160(y). See also 15 U.S.C. 78c(a)(18).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4.

membership application process and waive-in, which is obsolete. Each proposed change is described below.

Qualification and Registration Requirements

FINRA recently amended its rules relating to its qualification and registration requirements in a number of respects.⁹ These amended rules will be effective beginning on October 1, 2018. The Exchange is proposing several amendments to IEX rules with respect to membership and registration requirements to harmonize with such rule amendments in the FINRA Filing and FINRA's existing rules, as described below. The Exchange is proposing to adopt such harmonizing rule amendments and registration categories that it determined are relevant to its operations.¹⁰

Rule 2.160, entitled "Restrictions on Membership," sets forth various requirements applicable to Members and their associated persons, including registration requirements thereof. To make the title of the rule more descriptive of the current and proposed requirements set forth therein, the Exchange proposes to revise the title to "Registration Requirements and Restrictions on Membership." The Exchange believes that this title will more clearly direct Members, their associated persons and other market participants to the total scope of the rule.

⁹ See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Approval Order) (the "FINRA Filing").

¹⁰ The Exchange is not proposing to adopt provisions comparable to Supplementary Material .05, .06, or .11 [sic] to FINRA Rule 1210 because such provisions are not directly relevant to the Exchange's operations. The Exchange is also not proposing to adopt a provision comparable to Supplementary Material .07 to FINRA Rule 1210 because comparable provisions are included in proposed Rule 2.160(a) [sic]. In addition, the Exchange is not proposing to adopt the registration categories specified in FINRA Rule 1220(a)(5), (6), (8), (9), (10), (11), (12), (13) or (14) or in (b)(3), (5), (6), (7), (8), or (9) because such registration categories are not directly relevant to the Exchange's operations.

Rule 2.160(e) sets forth the requirement that no person shall become an associated person of a Member unless such person agrees:

- (1) to supply the Exchange with such information with respect to such person's relationships and dealings with the Member as may be specified by the Exchange;
- (2) to permit examination of such person's books and records by the Exchange to verify the accuracy of any information so supplied; and
- (3) to be regulated by the Exchange and to recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of IEX Rules, the Operating Agreement, the interpretations and policies of the Exchange, and the provisions of the Act and the regulations thereunder.

The manner in which an associated person of a Member agrees to such terms is by registering with the Exchange. However, as described below, the Exchange is proposing amendments to Rule 2.160(m) to specify that certain categories of associated persons of a Member are not required to be registered with the Exchange because such persons' roles and responsibilities are unrelated to the Exchange's operations, and registration therefore serves no regulatory purpose. Accordingly, the Exchange is proposing to amend Rule 2.160(e) to specify which associated persons of a Member must be registered with the Exchange, and also to provide that a Member shall not register or maintain the registration of any associated person unless consistent with the requirements of Rule 2.160.

Further, the Exchange is proposing to adopt Supplementary Material to Rule 2.160(e) governing permissive registrations and the status of persons serving in the Armed Forces of the United States, each based on provisions adopted by FINRA in the FINRA Filing that will be effective on October 1, 2018.¹¹

¹¹ See FINRA Rules 1210.02 and 1210.10. The Exchange is not including references to an admission fee, which is included in FINRA Rule 1210.10(b), in paragraph (b) of

As proposed, Supplementary Material .01 provides that a Member may make application for or maintain the registration as a representative or principal, pursuant to Rule 2.160, of any associated person of the Member and any individual engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the Member. Individuals maintaining such permissive registrations shall be considered registered persons and subject to all IEX rules, to the extent relevant to their activities. Supplementary Material .01 also addresses Members' supervisory obligations with respect to associated persons with permissive registrations. As proposed, consistent with the requirements of Rule 5.110, Members shall have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to an individual who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with Rule 5.110(a)(5), a Member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor shall be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor shall be registered as a principal. Moreover, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

As proposed, Supplementary Material .02 to Rule 2.160(e) addresses the status of current and former registered persons serving in active duty in the Armed Forces of the United States.

Supplementary Material .02 of Rule 2.160(e) since the Exchange does not charge an admission fee to Members.

With respect to a currently registered person of a Member who volunteers for or is called into active duty, paragraph (a) provides that after proper notification to the Exchange,¹² such person shall be placed on inactive status and need not be re-registered by such Member upon his or her return to active employment with the Member. Such person shall remain eligible to receive transaction-related compensation, including continuing commissions. The employing Member also may allow such person to enter into an arrangement with another registered person of the Member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such persons are inactive, they may not perform any of the functions and responsibilities performed by a registered person. Further, the registered person shall not be required to complete either the Regulatory Element or Firm Element, as set forth in Rule 2.160(p), while such person remains inactive and registered with the Member with which he or she was registered at the beginning of active duty, regardless of whether the person returns to active employment with another Member upon completion of his or her active duty. The relief shall be provided only to a person registered with a Member and only while the person remains on active military duty. Further, the Member with which such person is registered shall promptly notify the Exchange in such manner as the Exchange may specify of such person's return to active employment with the Member.¹³

Paragraph (b) of proposed Commentary .02 addresses the status of a Member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being

¹² The Exchange will issue a Regulatory Circular upon effectiveness of this proposed rule change describing the manner in which Members should provide notice to the Exchange with respect to the status of their current and former registered persons serving in active duty in the Armed Forces of the United States.

¹³ Id.

called into active duty in the Armed Forces of the United States. As proposed, after proper notification to the Exchange,¹⁴ such person shall be placed on inactive status solely while the Member remains on active military duty. Further, the sole proprietor shall promptly notify the Exchange in such manner as the Exchange may specify¹⁵ of his or her return to active participation in the securities business of the Member relating to activity that occurs on the Exchange.

Paragraph (c) of proposed Commentary .02 addresses the status of formerly registered persons, with respect to active military duty. Specifically, as proposed, the provision specifies that the lapse of such person's registrations shall be deferred (i.e., tolled) during the pendency of his or her active service in the Armed Forces of the United States, provided the Exchange is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first.¹⁶ The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. If a person placed on inactive status while serving in the Armed Forces of the United States ceases to be registered with a Member, the Exchange shall defer the lapse of registration requirements based on existing information in the CRD system, provided that the Exchange is properly notified¹⁷ of the person's period of active military service within two years following his or her completion of active service or upon his or her re- registration with a Member, whichever occurs first.¹⁸

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ The deferral shall terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-

Rule 2.160(f) specifies that the Exchange may require the successful completion of a written proficiency examination to enable it to examine and verify that prospective Members and associated persons of Members have adequate training, experience, and competence to comply with IEX rules and policies of the Exchange. Rule 2.160(g) specifies that if the Exchange requires the completion of such proficiency examinations, it may waive such examinations in exceptional cases and where good cause is shown, upon written request of the applicant, and accept other standards as evidence of an applicant's qualifications.¹⁹ The Exchange is proposing to add Supplementary Material .01 to provide for a waiver of examinations for individuals working for a financial services industry affiliate of a Member,²⁰ based on provisions adopted by FINRA in the FINRA Filing that will be effective on October 1, 2018.²¹ As proposed, the waiver is available upon request by a Member for an individual designated with the Exchange as working for a financial services industry affiliate of a Member if the following conditions are met: (a) prior to the individual's initial designation, the individual was registered as a representative or principal with the Exchange or FINRA for a total of five years within the most recent 10-year period, including for the most recent year with the Member that initially designated the individual; (b) the waiver request is made within seven years of the individual's

register with a Member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in Rule 2.160(o).

¹⁹ Any such waiver is pursuant to IEX Rule Series 9.600.

²⁰ For purposes of the Supplementary Material, a "financial services affiliate of a Member" is a legal entity that controls, is controlled by or is under common control with a Member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

²¹ See FINRA Rule 1210.09.

initial designation; (c) the initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5; (d) the individual continuously worked for the financial services industry affiliate(s) of a Member since the individual's last Form U5 filing; (e) the individual has complied with the Regulatory Element of continuing education as specified in Rule 2.160(a); and (f) the individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver.

Rule 2.160(h) specifies that the Exchange requires the General Securities Representative Examination ("Series 7") or an equivalent foreign examination module approved by the Exchange in qualifying persons seeking registration as General Securities Representatives, including as Authorized Traders, on behalf of Members. For those persons seeking limited registration as Securities Traders as described in paragraph (k) below, the Exchange requires the Securities Traders Qualification Examination ("Series 57"). Rule 2.160(h) also provides that the Exchange uses the Uniform Application for Securities Industry Registration or Transfer ("Form U4") as part of its procedure for registration and oversight of Member personnel. The Exchange proposes several changes to Rule 2.160(h). First, the Exchange proposes to amend Rule 2.160(h) to specify that before the registration of a qualifying person can be effective, such person shall pass the Securities Industry Essentials ("SIE") examination²² and an appropriate registration qualification examination, as specified in Rule 2.160(h). The SIE is a new general knowledge examination that was adopted by FINRA in the FINRA Filing and will be effective on October 1, 2018. Going forward, representative-level registration will require successful completion of the

²² Individuals who are registered with the Exchange, FINRA, or another national securities exchange as of October 1, 2018 will be considered to have passed the SIE.

SIE and a tailored, specialized knowledge examination for a person's particular registered role. The Exchange's proposed change aligns with changes to FINRA Rule 1210.03, which were included in the FINRA Filing and will be effective beginning on October 1, 2018. Conforming changes are also proposed to Rule 2.160(i) to reference the SIE with respect to representative-level prerequisites to the Series 14 and 24 principal-level examinations. The Exchange also proposes to adopt Commentary .01 to Rule 2.160(h) to provide that any person who is in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. FINRA has adopted a similar provision in the FINRA Filing and will be effective beginning on October 1, 2018.

The Exchange also proposes to amend Rule 2.160(h) to provide that any person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act and that controls, is controlled by or is under common control, with the Member is not required to be registered with the Exchange as a Securities Trader. This proposed change is substantially similar to existing National Association of Securities Dealers, Inc. ("NASD") Rule 1032(f) and FINRA Rule 1220(b)(4)(A), that was included in the FINRA Filing and will be effective on October 1, 2018.

Rule 2.160(i) currently provides in part that a sole proprietorship Member is not required to register at least two Principals with the Exchange, and that the Exchange may waive the two-Principal requirement in situations that indicate conclusively that only one Principal associated with the Member should be required to be registered. Given that one-person Members may be

organized in legal forms other than a sole proprietorship (such as a single-person limited liability company), the Exchange proposes to amend the reference to a “sole proprietorship” to a “Member with only one associated person” so that any Member with only one associated person is not subject to the two-Principal requirement. This proposed change is substantially similar to Supplementary Material .01 to FINRA Rule 1210 that was included in the FINRA Filing and will be effective on October 1, 2018.

Rule 2.160(i) also specifies that the Exchange will accept the New York Stock Exchange Series 14 Compliance Examination in lieu of the Series 24 to satisfy the examination requirement for any person designated as a Chief Compliance Officer. The Exchange proposes to delete the phrase “New York Stock Exchange” since the Series 14 is now referred to as the Series 14 Compliance Official Examination.²³

Further, the Exchange proposes to add Supplementary Material .01 related to the requirements for registered persons functioning as principals for a limited period of up to 120 calendar days. The provision aligns with FINRA Rule 1210.04 and is designed to provide appropriate flexibility to a Member to designate any person currently registered, or who becomes registered, with the Member as a representative to function as a principal for a limited period, providing such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation. As proposed, the provision applies to designations to any principal category, including those that are not subject to a representative-level prerequisite examination.²⁴

²³ See Series 14 examination description on FINRA website available at: <http://www.finra.org/industry/series14>.

²⁴ Principal categories for the Exchange that do not have such a prerequisite are the Financial and Operations Principal, Compliance Official, and Introducing Broker-Dealer Financial and Operations Principal.

Rule 2.160(j) sets forth the requirements for designation and registration of a Financial/Operations Principal by a Member and relates to the requirements for a Member to designate a Financial/Operations Principal, the Financial/Operations Principal's obligations, and examination requirements. The rule specifies that the Financial/Operations Principal is required to successfully complete the Financial and Operations Principal Examination ("Series 27") but that the Exchange may waive such requirement if a Member has otherwise satisfied the financial and operational requirements of its designated examining authority. With respect to an Exchange waiver, Rule 2.160(n) provides that an alternative acceptable examination to the Series 27 for a Financial/Operations Principal is any other examination acceptable to such Member's designated examining authority. The Exchange has provided waivers under these provisions for Members that operate as introducing broker-dealers when FINRA (as the Member's designated examining authority) has permitted the Member's Financial/Operations Principal to function as such based on successful completion of the Limited Principal – Introducing Broker-Dealer Financial and Operations Principal Examination ("Series 28") under applicable FINRA Rules.²⁵ FINRA Rule 1220(a)(4) (which was included in the FINRA Filing and will be effective on October 1, 2018) specifies that a FINRA member, other than a member operating pursuant to Exchange Act Rules 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), may designate an Introducing Broker-Dealer Financial and Operations Principal (who must successfully complete the Series 27 or 28 examination) instead of a Financial and Operations Principal (who must successfully complete the Series 27 examination).²⁶ Currently, an IEX Member that is eligible to designate an

²⁵ See NASD Rule 1022(c).

²⁶ The Exchange notes that the term Financial/Operations Principal in IEX rules is synonymous with the term Financial and Operations Principal in FINRA rules. A Member may designate an Introducing Broker-Dealer Financial and Operations Principal

Introducing Broker-Dealer Financial and Operations Principal under FINRA rules or the rules of another national securities exchange must request a waiver from the Exchange, pursuant to Rule 2.160(j), so that its Financial/Operations Principal may successfully complete the Series 28 examination instead of the Series 27 examination. Rule 2.160(j) specifies that the Exchange may waive the requirement that the Member's Financial/Operations Principal successfully complete the Series 27 examination if the Member has otherwise satisfied the financial and operational requirements of its designated examining authority. Pursuant to such waiver provisions, the Exchange has waived the Series 27 examination requirement for a Member's Financial/Operations Principal and accepted the Series 28 examination. In order to simplify and provide additional clarity on the acceptable examination requirements for IEX Members' Financial/Operations Principals, the Exchange proposes to amend Rule 2.160(j) to specifically describe when the Series 28 is an acceptable examination for a Member's Financial/Operations Principal. As proposed, the Exchange would replace the language regarding possible waiver of successful completion of the Series 27 examination with language providing that in the case of a Member that operates other than pursuant to Exchange Act Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), its Financial/Operations Principal must successfully complete either the Series 27 or Series 28 examination. Conforming amendments are also proposed to Rule 2.160(n).

The Exchange is proposing to amend Rule 2.160(o), which is currently reserved, to adopt rule provisions related to the circumstances under which registrations lapse and the SIE expires, aligning to FINRA Rule 1210.08 which was included in the FINRA Filing and will be effective on October 1, 2018. For purposes of this paragraph, an application shall not be considered to have been received by the Exchange if that application does not result in a registration. Rule

as its Financial/Operations Principal if the firm is not a clearing firm and does not operate pursuant to Exchange Act Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8).

2.160(o) provides that a person who was last registered as a representative or principal two or more years immediately preceding the date of receipt by the Exchange of a new application as a representative or principal, shall be required to pass a representative and/or principal qualification examination appropriate to his or her category or registration as specified in paragraphs (h), (i), (j), (k), (l), and (n) of Rule 2.160. Further, any person who last passed the SIE or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative, shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration as specified in paragraphs (h), (i), (j), (k), (l), and (n) of Rule 2.160. Additionally, any person whose registration has been revoked pursuant to Rule 8.310 shall be required to pass a principal or representative qualification examination appropriate to his or her category of registration as specified in paragraphs (h), (i), (j), (k), (l), and (n) of Rule 2.160 to be eligible for registration with the Exchange.

Rule 2.160(p) specifies the Regulatory Element of the continuing education requirements for associated persons of a Member and aligns with the FINRA requirements for the particular registration category of the registered person. Exchange rules do not currently address the Firm Element continuing education requirements.²⁷ The Exchange proposes to revise Rule 2.160(p) to

²⁷ The Exchange notes that the FINRA Firm Element requirement is only applicable to: (i) persons registered with a FINRA member who have direct contact with customers in the conduct of the member's securities sales, trading, and investment banking activities; (ii) persons registered as an operations professional or research analyst; and (iii) their immediate supervisors. An Exchange Member with associated persons registered in each of the aforementioned categories would be conducting a customer business. The Exchange is not proposing to adopt similar language modifying the "direct contact with customers" language in FINRA's rule. Any Exchange Member with a customer business is required to be a FINRA member pursuant to Section 15(b)(8) of the Act. Thus any Exchange Member that is not a FINRA member would not be conducting a customer business and thus would not have any associated persons that meet the FINRA criteria to

harmonize with the amended continuing education requirements specified in FINRA Rule 1240, as included in the FINRA Filing that will be effective on October 1, 2018. As proposed, Rule 2.160(p) will specify the required Continuing Education Regulatory Element and Firm Element. The Exchange is proposing several changes to Regulatory Element provisions. First, the Exchange proposes to add introductory text at the beginning of Rule 2.160(p) stating that “this [rule] prescribes requirements regarding the continuing education of specified persons subsequent to their initial registration with the Exchange. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.” The Exchange also proposes to add subparagraph (a) entitled “Regulatory Element” immediately after the new introductory text to delineate that the provisions that follow relate to the Regulatory Element. The Exchange also proposes several amendments to subparagraphs (a)(1), (2) and (3) to align with changes to FINRA Rule 1240.

Several changes are proposed to subparagraph (a)(1). First, in lieu of the current text describing persons subject to the continuing education requirements that refers to any “Authorized Trader, Principal, or Financial/Operations Principal” abbreviated as “Registered Representative,” the language would be revised to refer to “any associated person registered with the Exchange” abbreviated as “Registered Person” to be simpler and more inclusive and descriptive, since not all registered persons listed are considered to be a Registered Representative. Conforming changes are proposed throughout the rule. Second, existing rule text in the first paragraph of subparagraph (a)1) providing that “no Member shall permit any ... Registered Representative to continue to, and no Registered Representative shall continue to, perform duties as a Registered Representative on behalf of such Member, unless such person has

be subject to the FINRA Firm Element rule. Therefore, there is no gap in the application of the Firm Element requirement to Exchange Members and their associated persons.

complied with the continuing education requirements in this IEX Rule” will be replaced with language aligned with language in FINRA Rule 1240(a) and (5), providing that all registered persons, including any person who is permissively registered pursuant to Commentary .02 to Rule 2.160 and any person who is designated as eligible for a waiver pursuant to Commentary .01 to Rule 2.160(g), shall comply with the requirement to complete the Regulatory Element. Additionally, the Exchange proposes to add language at the end of subparagraph (a)(1) stating that the content of the Regulatory Element for a person designated as eligible for a waiver pursuant to Commentary .01 to Rule 2.160(g) shall be determined based on the person’s most recent registration status, and the Regulatory Element shall be completed based on the same cycle had the person remained registered.

Subparagraph (p)(2) [sic] specifies the consequences to a Registered Person who fails to complete the Regulatory Element of the continuing education program within the prescribed time frames. Currently, the rule provides that such a person will have their [sic] registration deemed inactive until such time as the requirements of the program have been satisfied and shall cease all activities requiring registration. The Exchange proposes to amend the rule to codify existing FINRA guidance regarding the impact of failing to complete the Regulation Element on a Registered Person’s activities and compensation.²⁸ Specifically, as proposed, Rule 2.160(p)(2) [sic] provides that any person whose registration has been deemed inactive under the rule shall not be permitted to be registered in another registration category under Rule 2.160 with that Member or to be registered in any registration category under Rule 2.160 with another Member, until the person has satisfied the deficiency. This provision is comparable to FINRA Rule 1210.07 (which was included in the FINRA Filing and will be effective on October 1, 2018).

²⁸ See, e.g., NASD Notice to Members 95-35 (May 1995).

Further, the Exchange proposes to add provisions that such a person may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the Member with which such person is associated has a policy prohibiting such trail or residual commissions. This clarifying language is substantially similar to amendments to FINRA Rule 1240 (which was included in the FINRA Filing and will be effective on October 1, 2018). In addition, the Exchange proposes to add language specifying that if a person designated as eligible for a waiver pursuant to Supplementary Material .01 to Rule 2.160(g) fails to complete the Regulatory Element within the prescribed time frames, the person shall no longer be eligible for such a waiver. The Exchange also proposes a conforming change to subparagraph (a)(3) with respect to the requirement to retake the Regulatory Element and satisfy all of its requirements in the event the person is subject to certain specified disciplinary action. These provisions align with FINRA Rule 1240.

Additionally, the Exchange proposes to add subparagraphs (a)(5) – (7) to align with FINRA Rule 1240. As proposed, subparagraph (a)(5) is reserved. The corresponding part of FINRA Rule 1240 pertains to the definition of a “Covered Person” under FINRA rules, who is subject to the Regulatory Element. As discussed above, the Exchange is using the term “Registered Person” which is incorporated into subparagraph (a)(1).²⁹ Subparagraph (a)(6) specifies that delivery of the Regulatory Element will be administered through Web-based delivery or such other technological manner and format as specified [sic] by FINRA.

²⁹ The term “Registered Person” in the Regulatory Element rule provisions has substantially the same meaning as FINRA’s term “Covered Person” except that FINRA excludes “Foreign Associates” from the term “Covered Person.” Foreign Associate is a discontinued FINRA registration category, as described in the FINRA Filing, and is not recognized by IEX rules. Accordingly, the Exchange does not believe it is necessary to exclude Foreign Associates from the definition of “Registered Person.”

Subparagraph (a)(7) requires designation and identification of the Regulatory Element Contact Person to FINRA on behalf of the Exchange and describes the role of such person to receive e-mail notifications provided via CRD regarding Regulatory Element deadlines for Registered Persons subject to the Regulatory Element, including when such a person is deemed inactive for failure to complete the Regulatory Element.

The Exchange also proposes to add new subparagraph (b) to Rule 2.160(p) to set forth the Firm Element requirements, which are substantially similar to FINRA Rule 1240(b)³⁰ and consist of annual, Member-developed and administered training programs designed to enhance covered registered persons' securities knowledge, skill, and professionalism, taking into consideration the Member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.³¹ If a Member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the Member's training plan.

As proposed, any person registered with a Member pursuant to Rule 2.160 who has direct contact with customers³² in the securities business of the Member relating to activity that occurs on the Exchange, and the immediate supervisors of such persons, must take all appropriate and reasonable steps to participate in the Firm Element training as required by his or her Member.

³⁰ In setting forth the persons subject to the Firm Element, proposed Rule 2.160(b)(1) [sic] is limited to persons registered with a Member pursuant to Rule 2.160 who have direct contact with customers in the securities business of the Member relating to activity that occurs on the Exchange, and to their immediate supervisors. FINRA Rule 1240(b)(1) is broader in scope given FINRA's broader regulatory mandate.

³¹ The definition of "covered registered person" under proposed Rule 2.160(p)(b) does not include Registered Options Professionals [sic] because that is not a registration category provided for in Exchange rules.

³² "Customer" means any natural person and any organization, other than another broker or dealer, executing securities transactions with or through a Member.

Subparagraph (b)(2)(B) sets forth the minimum standards for the Firm Element training programs. Such programs must be appropriate for the business of the Member and, at a minimum, must cover training in ethics and professional responsibility and the following matters concerning securities products, services and strategies offered by the Member: general investment features and associated risk factors; suitability and sales practice considerations; and applicable regulatory requirements. Further, a Member must administer its continuing education programs in accordance with its annual evaluation and written plan, and must maintain records documenting the content of the programs and completion of the programs by covered Registered Persons.³³

Finally, the Exchange also proposes to correct a typographical error in the footnote numbering of the chart in Rule 2.160(n).

Exchange Registration Exceptions

The Exchange is proposing to amend Rule 2.160(m), which is currently reserved, to specify that certain associated persons of a Member are not required to be registered with the Exchange, because such person's roles and responsibilities are unrelated to the Exchange's operations, and registration therefore serves no regulatory purpose. As proposed, the following categories of associated persons of a Member are not required to be registered with the Exchange:

- (1) Associated persons of a Member whose functions are solely and exclusively clerical or ministerial.
- (2) Associated persons of a Member whose functions are related solely and exclusively to:

³³ The Exchange may also require a Member, individually or as part of a larger group, to provide specific training to its covered Registered Persons in such areas as the Exchange deems appropriate. See proposed Rule 2.160(p)(b)(4).

- (A) effecting transactions on the floor of a national securities exchange and who are appropriately registered with such exchange;
 - (B) transactions in municipal securities;
 - (C) transactions in commodities; or
 - (D) transactions in securities futures, provided that any such person is appropriately registered with a registered futures association.
- (3) Associated persons of a Member that are restricted from accessing the Exchange and that do not engage in the securities business of the Member relating to activity that occurs on the Exchange.

The Exchange notes that each proposed exception is based on existing exceptions in FINRA rules or those of other exchanges. The proposed exceptions in Rule 2.160(m)(1) and (2) are substantially similar to FINRA rules, and the exception in Rule 2.160(m)(3) is substantially similar to a CBOE [sic] Exchange, Inc. (“CBOE”) rule.³⁴

With respect to the proposed exception in Rule 2.160(m)(3), the Exchange believes that such individuals do not need to be registered with the Exchange because those individuals do not access the Exchange directly and do not engage in the securities business of the Member relating to activity that occurs on the Exchange. For example, suppose that Firm XYZ is an Exchange Member and a member of the Nasdaq Stock Market LLC (“Nasdaq”). Ms. ABC is an associated person of XYZ, assigned to XYZ’s Nasdaq market maker “desk” which only sends orders to Nasdaq. Ms. ABC is subject to Nasdaq’s registration and qualification requirements. Ms. ABC

³⁴ See current NASD Rule 1060, FINRA Rule 1230 (which is pending effectiveness), and CBOE [sic] Exchange, Inc. Rule 3.6A(a)(2)(D).

would not be required to separately register with the Exchange so long as Ms. ABC does not send orders directly to the Exchange through XYZ and not another Exchange Member.³⁵

In addition, the Exchange proposes to add Supplementary Material .01 to clarify the registration requirements applicable to associated persons of a Member who accept customer orders, and the applicability to a determination of whether the functions of an associated person of a Member are solely and exclusively clerical or ministerial. As proposed, Supplementary Material .01 provides that the function of accepting customer orders is not considered a clerical or ministerial function. Each associated person of a Member who accepts customer orders under any circumstances shall be registered in an appropriate registration category pursuant to Rule 2.160. However, an associated person of a Member shall not be considered to be accepting a customer order where occasionally, when an appropriately registered person is unavailable, such person transcribes order details submitted by a customer and the registered person contacts the customer to confirm the order details before entering the order. This clarification is substantially similar to Supplementary Material .01 to FINRA Rule 1230 (which was included in the FINRA Filing and will be effective on October 1, 2018), and is designed to provide that acceptance of customer orders is appropriately overseen by a registered associated person of a Member.

The Exchange also proposes a conforming amendment to Rule 2.160(e) to incorporate the registration exception.

Deletion of Obsolete Rule 2.150

As approved by the Commission as part of the Exchange's Form 1 application,³⁶ Rule 2.150 provided a temporary Member Application and Waive-In Process that permitted current

³⁵ For example, an order originating from XYZ's Nasdaq market maker desk may be routed to the Exchange by another Member.

³⁶ See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

subscribers to the alternative trading system previously operated by the Exchange's affiliate, IEX Services, LLC, to apply to become a Member of the Exchange by submitting a "waive-in application" within ninety (90) days of approval of the Form 1 by the Commission. The Commission approved the Exchange's Form 1 application on June 17, 2016, meaning that waive-in applications must have been received by the Exchange on or prior to September 15, 2016. Accordingly, Rule 2.150 is obsolete, and the Exchange proposes to delete the rule.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act³⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act³⁸ 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 also believes that the proposed rule change furthers the objectives of Section 6(c)(3)(B) of the Act,³⁹ which authorizes the exchange to prescribe standards of training, experience and competence for persons associated with an IEX Member.

The Exchange believes that the proposed rule change overall will harmonize its membership and registration rules with FINRA rules,⁴⁰ thus assisting Members and associated persons of Members in complying with those rules and thereby enhancing regulatory efficiency. In addition, the Exchange believes that providing greater harmonization between IEX and

³⁷ 15 U.S.C. 78f.

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78(c)(3)(B).

⁴⁰ The Exchange is proposing to harmonize with those aspects of FINRA rules that IEX determined are relevant to its operations.

FINRA rules with a similar purpose will result in less burdensome and more efficient regulatory compliance for IEX Members that are subject to regulatory examination and oversight by FINRA pursuant to a regulatory services agreement between IEX and FINRA, and facilitate FINRA's performance of its regulatory functions for IEX under the regulatory services agreement, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5) of the Act.

As described in the Purpose section, the Exchange proposes various revisions to Rule 2.160, which sets forth the requirements applicable to Members and their associated persons, including registration requirements thereof. The Exchange believes that these proposed rule amendments are consistent with the public interest and the protection of investors. With respect to the revisions to the rule title, the Exchange believes that referencing registration requirements, as well as restrictions on membership, is a clearer description of the scope of the rule and will thereby enable Members, their associated persons, and other market participants to better identify such requirements in IEX rules. Similarly, the Exchange believes that adding text to paragraph (e) of Rule 2.160 to reference proposed changes to paragraph (m) regarding registration exemptions (as discussed further below) and impermissible registrations will help to assure that IEX's rules are clear regarding such requirements.

The Exchange further believes that the addition of Supplementary Material .01 to Rule 2.160(e), to permit permissive registrations, is consistent with the Act in order to allow Members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. The Exchange also believes that the addition Supplementary .02 to Rule 2.160(e) regarding the status of current and former registered persons serving in active duty in the Armed Forces of the United States is consistent

with the Act because it provides a reasonable accommodation to such persons, who are engaged in efforts to protect and defend the United States, with an appropriate notification process to the Exchange, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5 [sic] of the Act.

Additionally, the Exchange believes it is consistent with the Act to provide an examination waiver for individuals working for a financial services industry affiliate of a Member, pursuant to Supplementary Material .02 to Rule 2.160(g), because it will provide appropriate flexibility to Members and their financial services industry affiliates in the management of their personnel, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5 [sic] of the Act.

The Exchange also believes that its proposed changes to Rule 2.160(h) are consistent with the Act. Specifically, adoption of the SIE is designed to promote uniformity and consistency with FINRA's rules of similar purpose, thereby fostering cooperation and coordination with persons engaged in regulating and facilitating transactions in securities. In addition, the Exchange believes that it is consistent with the Act to not require Exchange registration as a Securities Trader for associated persons of a Member whose trading activities are conducted principally on behalf of an investment company affiliate of the Member, as described in the Purpose section. This exemption has been part of FINRA (and its predecessor, the NASD) rules applicable to the current Securities Trader examination as well as the predecessor Series 55 examination for many years, and recognizes that such traders are generally

in the same position as “buy-side” professionals employed within investment companies, who would not be subject to the examination requirement.⁴¹

The Exchange also believes it is appropriate to provide an exemption from the SIE for any person who is in good standing as a representative with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulatory. The Exchange believes that there is sufficient overlap between the SIE and such foreign qualification requirements to permit them to act as exemptions to the SIE, and that the exemption provides appropriate flexibility to such persons, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5) [sic] of the Act.

With respect to the amendment to Rule 2.160(i) to revise the reference to “sole proprietorship” to a “Member with only one associated person” the Exchange believes that this change is consistent with the Act because it recognizes that one-person Members may be organized in legal forms other than a sole proprietorship, and thus provides fair and consistent regulatory requirements to all one-person Members. Further, the Exchange believes that elimination of the reference to “New York Stock Exchange” with respect to the Series 14 Compliance Official Examination is consistent with the Act because it will make the Exchange’s rule in this respect accurate. The Exchange also believes that the addition of Supplementary Material .01 to Rule 2.160(i) to provide for registered persons to function as principals for a limited period of time is consistent with the Act because it provides appropriate flexibility to Members, thereby removing impediments to and perfecting the mechanism of a free and open

⁴¹ See, e.g., NASD Notice to Members 98-17 and Securities Exchange Act Release No. 75783 (August 28, 2015), 80 FR 53369 (September 03, 2015) (approving File No. SR-FINRA-2015-17).

market and a national market system, consistent with the objectives of Section 6(b)(5) [sic] of the Act.

With respect to the amendment to Rules 2.160(j) and (n) to specify the circumstances under which the Series 28 would be an acceptable examination for a Member's Financial/Operations Principal, the Exchange believes that the proposed change will provide additional clarity to Members with respect to such examination requirements and also reduce the existing burden on impacted Members to request a waiver from the Exchange for an examination that has already been accepted by the Member's designated examining authority, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5) of the Act.

With respect to the amendments to Rule 2.160(o) to add rule provisions regarding the circumstances under which registrations lapse and the SIE expires, the Exchange believes such amendments are consistent with the Act because they will align with FINRA rules of similar purpose, thereby fostering cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

With respect to the proposed amendments to Rule 2.160(p) regarding continuing education requirements, the Exchange believes that the proposed changes are consistent with the Act and the public interest, because they will provide additional clarity and consistency to the rule provisions in several respects and also align with FINRA rules of similar purpose, thereby fostering cooperation and coordination with persons engaged in regulating and facilitating transactions in securities. First, the Exchange believes that the terminology change to collectively refer to a "Registered Person" rather than a "Registered Representative" is more inclusive and descriptive of the categories of associated persons of a Member who are registered

with the Exchange and subject to the continuing education requirements, thereby avoiding any potential confusion. Second, the Exchange believes that harmonizing with FINRA's continuing education requirements will promote uniformity in the application of the continuing education requirements for Registered Persons and thereby avoid any confusion on the part of IEX Members and their associated persons on what is required under IEX rules.

The Exchange also believes that correcting the typographical error in the footnote numbering of the chart in Rule 2.160(n) is consistent with the Act because it will avoid any potential confusion regarding the chart and its footnotes.

The Exchange believes that the proposed amendments to Rule 2.160(m) (and conforming amendment to Rule 2.160(e)) to specify that certain categories of associated persons of a Member are not required to be registered with the Exchange is consistent with the Act because such persons' roles and responsibilities are unrelated to the Exchange's operations, and registration therefore serves no regulatory purpose. Further, the Exchange believes that (except for floor members of another national securities exchange and associated persons restricted from accessing the Exchange and that do not engage in the securities business of the Member relating to activity that occurs on the Exchange) such persons would not be considered actively engaged in the securities business. With respect to persons registered as floor members on another national securities exchange and associated persons restricted from accessing the Exchange and that do not engage in the securities business of the Member relating to activity that occurs on the Exchange, the Exchange believes that requiring registration with IEX is not warranted since the associated person's activities are unrelated to activity that occurs on the Exchange. As discussed in the Purpose section, the proposed registration exemptions are substantially similar to existing registration exemptions in FINRA and CBOE [sic] rules, and thus do not raise any new or novel

issues not already considered by the Commission. Thus, the Exchange believes that the proposed exemptions will remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5) of the Act.

In addition, the Exchange believes that proposed Supplementary Material .01 to Rule 2.160(m) is consistent with the Act because it provides clarity on when the functions of an associated person are solely and exclusively clerical or ministerial, which also is consistent with the objectives of Section 6(b)(5) of the Act.

Finally, the Exchange believes that deletion of Rule 2.150 is consistent with the Act because the rule is obsolete, as described in the Purpose section. Accordingly, deletion of the rule will remove any potential confusion among potential Members as to the membership application process.

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 amendments are intended to promote transparency in the Exchange's rules, and consistency with the rules of FINRA and other national securities exchanges with respect to the examination, qualification, and continuing education requirements applicable to Members and their associated persons. Accordingly, the Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of such regulatory objectives. Further, the proposed changes would apply to all Members and their associated persons in the same manner and therefore would not impose any unnecessary intramarket burdens. The Exchange also does not believe that the proposed rule change would impose any burden on intermarket competition since all national securities exchanges are

expected to adopt similar rules with uniform standards for the qualification, registration and continuing education requirements.

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

Written comments were neither solicited nor received.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)⁴² of the Act and Rule 19b-4(f)(6)⁴³ 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)⁴⁴ of the Act and Rule 19b-4(f)(6)⁴⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁴⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴⁷ 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 so the proposed rule change may become operative on October

⁴² 15 U.S.C. 78s(b)(3)(A).

⁴³ 17 CFR 240.19b-4(f)(6).

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

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

⁴⁶ 17 CFR 240.19b-4(f)(6).

⁴⁷ 17 CFR 240.19b-4(f)(6)(iii).

1, 2018. According to the Exchange, waiving the 30-day operative delay would allow the Exchange to harmonize its rules with FINRA as of the effective date of the FINRA Filing. The Commission notes that, as described in detail above, the Exchange's proposal does not raise any new or novel issues, as the Exchange is harmonizing its rules with FINRA and Cboe, and deleting obsolete text. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.⁴⁸

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)⁴⁹ 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

⁴⁸ For purposes only of waving the 30-day operative delay, the Commission has considered the purposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁹ 15 U.S.C. 78s(b)(2)(B).

- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2018-19 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-2018-19. 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 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-2018-19 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.⁵⁰

Eduardo A. Aleman
Assistant Secretary

⁵⁰ 17 CFR 200.30-3(a)(12).