

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91691; File No. SR-IEX-2021-07)

April 27, 2021

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-IEX-2020-20.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 21, 2021, Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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) of the Act³ and Rule 19b-4 thereunder,⁴ IEX is filing with the Commission a proposed rule change to amend IEX Rule 2.160 (Registration Requirements and Restrictions on Membership), Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under paragraph (i) of the rule. The Exchange is proposing to extend the expiration date of the temporary amendment initially set forth in SR-IEX-2020-20⁵ from April 30, 2021, to June 30, 2021. The proposed rule change would harmonize the IEX Rule with a Financial Industry

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Exchange Act Release No. 90752 (December 21, 2020), 85 FR 85824 (December 21, 2020) (SR-IEX-2020-20).

Regulatory Authority, Inc. (“FINRA”) rule amendment that extended the 120-day period during which certain individuals can function as a principal without having successfully passed an appropriate qualifying examination, from April 30, 2021 through June 30, 2021.⁶ IEX does not anticipate providing any further extensions to the temporary amendment identified in this proposed rule change beyond June 30, 2021.⁷

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 Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX Rule 2.160(i), Supplementary Material .01 provides, inter alia, that an IEX Member (“Member”) may designate any person currently registered, or who becomes registered with the Member as a representative to function as a principal for 120 calendar days prior to passing an

⁶ See Exchange Act Release No. 34-91506 (April 8, 2021), 86 FR 19671 (April 14, 2021) (SR-FINRA-2021-005).

⁷ If due to unforeseen circumstances a further extension is necessary, IEX will submit a separate rule filing to further extend the temporary amendment.

appropriate principal qualification examination and that, in no event, may such person function as a principal beyond the initial 120 calendar day period without having passed an appropriate principal qualifying examination.

On December 15, 2020, the Exchange filed with the Commission, for immediate effectiveness, a proposed rule change to adopt Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under Rule 2.160(i).⁸ Supplementary Material .02 extended the 120-day period during which an individual designated by a Member to function as a principal could do so without having successfully passed the required qualifying examination. Specifically, the rule change provided that any individual designated by a Member as a principal prior to January 1, 2021 may continue to function as a principal without having passed an appropriate qualifying examination until April 30, 2021.

The Exchange is proposing to further extend the temporary relief provided in Supplementary Material .02. Under the proposed amendment, an individual designated to function as a principal prior to March 3, 2021 may continue to function as a principal without having successfully passed an appropriate qualifying examination until June 30, 2021. The proposed amendment will align IEX's rule with FINRA Rule 1210, which was recently amended to provide the same temporary extension for individuals designated as principals due to the continuing impact of the COVID-19 pandemic.⁹ FINRA performs certain functions related to the qualification, registration and continuing education requirements for registered persons pursuant to a regulatory services agreement with the Exchange.

⁸ See supra note 5.

⁹ See supra note 6.

In response to the COVID-19 global pandemic, during 2020 FINRA began providing temporary relief to firms from FINRA rules and requirements via frequently asked questions (“FAQs”) on its website.¹⁰ Two of these FAQs¹¹ provided temporary relief to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that had significantly limited the ability of individuals to sit for these examinations due to Prometric test center capacity issues.¹²

FINRA published the first FAQ on March 20, 2020, providing that individuals designated to function as principals under FINRA Rule 1210.04 prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.¹³ FINRA revised the FAQ to extend the expiration of the temporary relief to pass the appropriate examination until June 30, 2020, and then until August 31, 2020.

On August 28, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to extend the temporary relief provided via the two FAQs by adopting temporary Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 (Registration

¹⁰ See Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq>.

¹¹ See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

¹² At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March 2020 Prometric closed all its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

¹³ FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination.

Requirements).¹⁴ Pursuant to this rule filing, individuals who were designated prior to September 3, 2020, to function as a principal under FINRA Rule 1210.04 would have until December 31, 2020, to pass the appropriate qualification examination.

On December 9, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to extend the limited period for registered persons to function as a principal through April 30, 2021.¹⁵ IEX thereafter filed with the Commission its proposed rule change to adopt Temporary Supplementary Material .02, to provide the same relief extending the limited period for registered persons to function as a principal without successfully passing the appropriate qualifying examination through April 30, 2021.¹⁶

The temporary relief was extended to address the interruptions in the administration of qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examination as a result of the COVID-19 pandemic.¹⁷ It was noted that the pandemic could also result in firms potentially experiencing significant disruptions to their normal business operations that may be exacerbated if principal positions remained unfilled. Specifically, the limitation of in-person operations and staff absenteeism as a result of health and welfare concerns stemming from COVID-19 could result in firms having difficulty finding other

¹⁴ See Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-026). FINRA's proposed rule changes also provided for a similar temporary extension of the limited period for persons to function as an Operations Professional under FINRA Rule 1220(b)(3)(B) to December 31, 2020, and later to April 30, 2021, to pass the appropriate qualification examination. IEX does not have Operations Professional as a registration category.

¹⁵ See Exchange Act Release No. 90617 (December 9, 2020), 85 FR 81258 (December 15, 2020) (SR-FINRA-2020-043).

¹⁶ See supra note 5.

¹⁷ Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/key-topics/covid-19/exams>.

qualified individuals to transition into the principal role or requiring them to reallocate employee time and resources away from other critical responsibilities at the firm.

While there are signs of improvement, the COVID-19 conditions necessitating temporary relief persist, and the Exchange has determined that there is a continued need for this temporary relief beyond April 30, 2021. Although Prometric has resumed testing in many of its U.S. test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.¹⁸ In addition, while certain states have started to ease COVID-19 restrictions on businesses and social activities, public health officials continue to emphasize the importance for individuals to keep taking steps to protect themselves and help slow the spread of the disease.¹⁹

Although the COVID-19 conditions necessitating the temporary relief persist, the Exchange believes that an extension of the relief is necessary only until June 30, 2021, because of a recently expanded availability of online examinations. Prior to this expansion, the ongoing effects of the pandemic made it impracticable for IEX Members to ensure that the individuals designated to function in a principal capacity, as set forth in IEX Rule 2.160(i), could successfully sit for and pass the appropriate qualification examination within the 120-calendar day period required under the rule. Specifically, if the individual wanted to take a qualifying examination, they were required to accept the health risks associated with taking an in-person examination because the examination was not available online. On February 24, 2021, however,

¹⁸ Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virus-update>.

¹⁹ See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

FINRA adopted an interim accommodation request process to allow candidates to take additional FINRA examinations online, including the General Securities Principal (“Series 24”) examination.²⁰ Because the Series 24 qualifying examination has been made available online only recently, the Exchange is concerned that individuals who have been designated to function in a principal capacity may not have sufficient time to schedule, study for, and take the applicable examination before April 30, 2021, the date the temporary amendment is set to expire. Therefore, the Exchange is proposing to extend the expiration date of the temporary amendment set forth in SR-IEX-2020-20 from April 30, 2021 to June 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal prior to March 3, 2021. As noted above, the Exchange does not anticipate providing any further extensions to the temporary amendments and any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

The Exchange believes that this proposed continued extension of time is tailored to address the needs and constraints on Members’ operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on Members by providing continued flexibility so that they can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the ongoing requirement that Members supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as IEX Rules.

²⁰ See supra note 177.

As noted in Item 1 of this filing, IEX has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so IEX can implement the proposed rule change immediately.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²¹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act²² 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 by harmonizing the Exchange's registration rules with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting the application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

The Exchange further notes that the proposed rule change is intended to minimize the impact of COVID-19 on Members' operations by further extending the 120-day period during which individuals may function as a principal without having successfully passed the appropriate qualifying examination required under IEX Rule 2.160(i), Supplementary Material .01, until June 30, 2021. The proposed change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

persons to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, IEX believes that the propose rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical principal positions are filled and customer services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

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 intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 pandemic and the related health and safety risks of conducting in-person activities. IEX believes that the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under IEX Rule 2.160 in response to the impacts of the COVID-19 pandemic that would otherwise result if the current temporary extension were to expire on April 30, 2021.

IEX further notes that the proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with IEX. The proposed rule change will also provide for consistent application of the Exchange's registration rules with those of FINRA, on which they are based. Consequently, the Exchange believes that the proposed temporary relief afforded by the proposed rule change and the benefit of harmonizing the Exchange's registration and qualification rules with those of FINRA does not present any burden on competition that is not necessary or appropriate in furtherance of the

purposes of the Act.

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 Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), 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 that the proposed rule change may become operative immediately upon filing. As noted above, the Exchange stated that the conditions necessitating the temporary relief continue to exist and the proposed extension of time will help minimize the impact of the COVID-19 outbreak on IEX Members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. Despite signs of improvement, the Exchange further stated that the ongoing extenuating circumstances of the COVID-19

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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 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.

pandemic make it impractical to ensure that individuals designated to act in a principal capacity are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

The Exchange observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.²⁵ However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) Examination online through an interim accommodation request process.²⁶ Prior to this change, if individuals wanted to take these qualifying examinations, they were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, the Exchange stated that extending the expiration date of the relief set forth in SR-IEX-2020-20 until June 30, 2021 is still needed. The Exchange stated that this temporary relief will provide flexibility to allow individuals who have been designated to function as a principal sufficient time to schedule, study for and take the applicable examination before the temporary relief expires. Notably, the Exchange stated that it does not anticipate providing any further extensions to the temporary amendment and that any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

²⁵ See supra notes 17 and 18. The Exchange notes that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²⁶ See supra note 17 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) Examination, online.)

For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²⁷ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁸

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 approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2021-07 on the subject line.

²⁷ As noted above by the Exchange, this proposal is an extension of temporary relief provided in SR-IEX-2020-20 where the Exchange also requested and the Commission granted a waiver of the 30-day operative delay. See SR-IEX-2020-20, 85 FR at 85826-27.

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-IEEX-2021-07. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-2021-07 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.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).