

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93324; File No. 4-700)

October 14, 2021

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Investors' Exchange LLC

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on September 13, 2021, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. ("FINRA") and Investors' Exchange LLC ("IEX") (collectively, "Participating Organizations" or "parties"). This agreement amends and restates the agreement entered into between FINRA and IEX on June 20, 2016, entitled "Agreement between Financial Industry Regulatory Authority, Inc. and Investors' Exchange LLC pursuant to Rule 17d-2 under the Securities Exchange Act of 1934," and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. The Plan

On July 28, 2016, the Commission declared effective the Plan entered into between FINRA and IEX for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and IEX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every IEX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to IEX members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On September 13, 2021, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to clarify what is considered a Common Rule under the Plan, add Securities Exchange Act Rules 604, 610(d), and 611 to the Certification, eliminate the requirement that IEX provide to FINRA a current list of members each quarter, and eliminate the requirement that IEX and FINRA notify Dual Members of the Agreement after the Effective Date by a uniform joint notice. The text of the proposed Amended Plan is as follows (additions are italicized; deletions are [bracketed]):

* * * * *

¹¹ See Securities Exchange Act Release No. 54136 (July 12, 2006), 81 FR 51256 (August 3, 2016).

**AGREEMENT BETWEEN FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC. AND
INVESTORS' EXCHANGE LLC PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (“FINRA”) and Investors’ Exchange LLC (“IEX”), is made this [20th]9th day of [June 20, 2016] September, 2021 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and IEX may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between FINRA and IEX on June 20, 2016, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Investors’ Exchange LLC pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, FINRA and IEX desire to reduce duplication in the examination and surveillance of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and IEX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and IEX hereby agree as follows:

1. **Definitions.** Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the

Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “IEX Rules” or “FINRA Rules” shall mean: (i) the rules of IEX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean IEX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination or surveillance for compliance with such provisions and rules would not require FINRA to develop one or more new examination or surveillance standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member’s activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, IEX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among [BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca Inc., effective December 16, 2011], Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange

LLC, NYSE American LLC, NYSE Arca, Inc., Investors Exchange LLC and Long-Term Stock Exchange, Inc. approved by the Commission on September 23, 2020 as may be amended from time to time. Common Rules shall not include any provisions regarding: (i) notice, reporting or any other filings made directly to or from IEX; (ii) incorporation by reference of other IEX Rules that are not Common Rules; (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority by IEX; (iv) prior written approval of IEX; and (v) payment of fees or fines to IEX.

(c) “Dual Members” shall mean those IEX members that are also members of FINRA and the associated persons therewith.

(d) “Effective Date” shall be the date this Agreement is approved by the Commission.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanctions guidelines.

(f) “Regulatory Responsibilities” shall mean the examination responsibilities, surveillance responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and

the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. **Regulatory and Enforcement Responsibilities.** FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, IEX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are IEX Rules are substantially similar to the corresponding FINRA Rules (the “Certification”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of IEX or FINRA, IEX shall submit an updated list of Common Rules to FINRA for review which shall add IEX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete IEX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be IEX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and IEX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “Retained Responsibilities”) the following:

(a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving IEX’s own marketplace for rules that are not Common Rules;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any IEX Rules that are not Common Rules, except for IEX Rules for IEX Services LLC as provided in paragraph [6]5.

[3. **Dual Members.** Prior to the Effective Date, IEX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.]

[4]3. **No Charge.** There shall be no charge to IEX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as otherwise agreed by the parties, either herein or in a separate agreement.

[5]4. **Applicability of Certain Laws, Rules, Regulations or Orders.**

Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule or order is inconsistent with this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

[6]5. **Notification of Violations.**

(a) In the event that FINRA becomes aware of apparent violations of any IEX Rules, which are not listed as Common Rules, discovered pursuant to the performance of

the Regulatory Responsibilities assumed hereunder, FINRA shall notify IEX of those apparent violations for such response as IEX deems appropriate.

(b) In the event that IEX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, IEX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. With respect to apparent violations of IEX Services LLC FINRA shall not make referrals to IEX pursuant to this paragraph [6]5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on IEX, IEX may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

[7]6. **Continued Assistance.**

(a) FINRA shall make available to IEX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish IEX any information it obtains about Dual Members which reflects

adversely on their financial condition. IEX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

[8]7. **Statutory Disqualifications.** When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep IEX advised of its actions in this regard for such subsequent proceedings as IEX may initiate.

[9]8. **Customer Complaints.** IEX shall forward to FINRA copies of all customer complaints involving Dual Members received by IEX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

[10]9. **Advertising.** FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

[11]10. **No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

[12]11. **Termination.** This Agreement may be terminated by IEX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party.

[13]12. **Arbitration.** In the event of a dispute between the parties as to the operation of this Agreement, IEX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section [13]12 shall interfere with a party's right to terminate this Agreement as set forth herein.

[14. **Notification of Members.** IEX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.]

[15]13. **Amendment.** This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

[16]14. **Limitation of Liability.** Neither FINRA nor IEX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or IEX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or IEX with respect to any of the responsibilities to be performed by each of them hereunder.

[17]15. **Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and IEX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve IEX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

[18]16. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms

and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[19]17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

[Remainder of page intentionally left blank.]

NOTE: The entire existing table of rules should be deleted and replaced with the table below and for the remainder of the exhibit new text is underlined and deleted text is in brackets.

EXHIBIT 1

IEX CERTIFICATION OF COMMON RULES

IEX hereby certifies that the requirements contained in the rules listed below for IEX are identical to, or substantially similar to, the comparable FINRA [(NASD)] Rules, Exchange Act provision or SEC rule identified (“Common Rules”).

Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from IEX, (ii) incorporations by reference of other IEX Rules that are not Common Rules (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority, by IEX, (iv) prior written approval of IEX, and (v) payment of fees or fines to IEX.

IEX Rule	FINRA Rule, Exchange Act Provision, SEC Rule
Rule 2.140 Prohibited Conditions Relating to Expungement of Customer Dispute	FINRA Rule 2081 Prohibited Conditions Relating to Expungement of Customer Dispute
Rule 2.160(o) Lapse of Registration and Expiration of SIE	FINRA Rule 1210.08 – Registration Requirements - Lapse of Registration and Expiration of SIE
Rule 2.160(p) Restrictions on Membership – Continuing Education Requirements [#]	FINRA Rule 1240(a)(1)-(4), (6) – (7) and (b) Continuing Education Requirements
Rule 2.160(q) and (r) Registration Requirements and Restrictions on Membership, and Rule 2.170(b) and (g) Application Procedures for Membership or to become an Associated Person of a Member [#]	FINRA By-Laws of the Corporation Article IV, Sec 1(c) Application for Membership, Article V, Sections 2 and 3 Application for Registration and Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification, FINRA Rule 1010(c) and (e) Electronic Filing Requirements for Uniform Forms and FINRA Rule 4517 Members Filing and Contact Information Requirements
Rule 2.240 Fidelity Bonds [#]	FINRA Rule 4360 Fidelity Bonds
Rule 3.110 Business Conduct of Members [^]	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade [^]

Rule 3.120 Violations Prohibited ^{1^#}	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade [^] and FINRA Rule 3110 Supervision
Rule 3.130 Use of Fraudulent Devices [^]	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices [^]
Rule 3.150 Know Your Customer	FINRA Rule 2090 Know Your Customer
Rule 3.160 Fair Dealing with Customers	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices [^]
Rule 3.170 Suitability	FINRA Rule 2111 Suitability
Rule 3.180(a) The Prompt Receipt and Delivery of Securities	FINRA Rule 11860 COD Orders
Rule 3.180(b) The Prompt Receipt and Delivery of Securities	SEA Regulation SHO
Rule 3.190 Charges for Services Performed	FINRA Rule 2122 Charges for Services Performed
Rule 3.200 Use of Information Obtained in a Fiduciary Capacity	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity
Rule 3.210 Publication of Transactions and Quotations	FINRA Rule 5210 Publication of Transactions and Quotations
Rule 3.220 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices
Rule 3.230 Payments Involving Publications that Influence the Market Price of a Security	FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security
Rule 3.240 Customer Confirmations	FINRA Rule 2232(a) Customer Confirmations and SEA Rule 10b-10 Confirmation of Transactions
Rule 3.250 Disclosure of Control Relationship with Issuer	FINRA Rule 2262 Disclosure of Control Relationship with Issuer
Rule 3.260 Discretionary Accounts	FINRA Rule 3260 Discretionary Accounts
Rule 3.270 Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts	FINRA Rule 2150(a)-(c) and SM .03 Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts
Rule 3.280 Communications with the Public	FINRA Rule 2210 Communications with the Public
	FINRA Rule 2265 Extended Hours Trading Risk Disclosure
Rule 3.291 Influencing or Rewarding Employees of Others; Gratuities	FINRA Rule 3220 Influencing or Rewarding Employees of Others
Rule 3.292 Telemarketing	FINRA Rule 3230 Telemarketing
Rule 3.293 Short-Interest Reporting	FINRA Rule 4560 Short-Interest Reporting

¹ FINRA shall only have Regulatory Responsibilities for Rule 3.120(a) regarding conduct in violation of the Act, or the rules or regulations thereunder.

Rule 4.511 General Requirements	FINRA Rule 4511 General Requirements
Rule 4.512 Customer Account Information	FINRA Rule 4512 Customer Account Information
Rule 4.513 Record of Written Customer Complaints	FINRA Rule 4513 Record of Written Customer Complaints
Rule 4.550 Disclosure of Financial Condition	FINRA Rule 2261 Disclosure of Financial Condition
Rule 5.110 Supervision [#]	FINRA Rule 3110 Supervision
Rule 5.120 Supervisory Control System [#]	FINRA Rule 3120 Supervisory Control System
Rule 5.130 Annual Certification of Compliance and Supervisory Processes [#]	FINRA Rule 3130 Annual Certification of Compliance and Supervisory Processes
Rule 5.160 Anti-Money Laundering Compliance Program [#]	FINRA Rule 3310 Anti-Money Laundering Compliance Program
Rule 5.170 Transactions for or by Associated Persons	FINRA Rule 3210 Accounts At Other Broker-Dealers and Financial Institutions
Rule 6.120 Failure to Deliver and Failure to Receive	Regulation SHO Rules 200 and 203
Rule 6.130(a), (b), (d)-(i) Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials
Rule 10.110(a) Market Manipulation	FINRA Rule 6140 Other Trading Practices
Rule 10.110(b) Market Manipulation	FINRA Rule 5210 Publication of Transactions and Quotations, FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices, FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade, and FINRA Rule 6140(a) Other Trading Practices
Rule 10.120 Fictitious Transactions	FINRA Rule 6140 Other Trading Practices and FINRA Rule 5210 Supplementary Material .02 Self-Trades
Rule 10.130 Excessive Sales By A Member	FINRA Rule 6140(c) Other Trading Practices
Rule 10.140 Manipulative Transactions	FINRA Rule 6140 Other Trading Practices
Rule 10.150 Dissemination of False Information	FINRA Rule 6140(e) Other Trading Practices
Rule 10.160 Prohibition Against Trading Ahead of Customer Orders ^{#**}	FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders ^{**}
Rule 10.180 Influencing the Consolidated Tape	FINRA Rule 6140(a) Other Trading Practices and FINRA Rule 5210 Publication of Transactions and Quotations
Rule 10.190 Trade Shredding	FINRA Rule 5290 Order Entry and Execution Practices
Rule 10.220 Best Execution and Interpositioning ^{**}	FINRA Rule 5310 Best Execution and Interpositioning ^{**}

Rule 10.240 Trading Ahead of Research Reports**	FINRA Rule 5280 Trading Ahead of Research Reports**
Rule 10.260 Front Running of Block Transactions**	FINRA Rule 5270 Front Running of Block Transactions**
Rule 11.151(e) Market Maker Obligations	FINRA Rule 6240(a) - (c), (d)(1) and (2) Prohibition from Locking or Crossing Quotations in NMS Stocks
Rule 11.280(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility	FINRA Rule 6190(a)&(b) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility
Rule 11.310 Locking or Crossing Quotations in NMS Stocks**	FINRA Rule 6240(a), - (c), (d)(1) and (2) Prohibition from Locking or Crossing Quotations in NMS Stocks**
Rule 11.420(c) Order Audit Trail System Requirements	FINRA Rule 4590 Synchronization of Member Business Clocks
Rule 11.420(d) - Order Audit Trail System Requirements - Recording of Order Information	FINRA Rule 7440 - Recording of Order Information
Rule 11.420(e) - Order Audit Trail System Requirements - Order Data Transmission Requirements	FINRA Rule 7450 – Order Data Transmission
Rule 12.110(c) Arbitration	FINRA Rule 2268 Requirements When Using Predispute Arbitration Agreements for Customer Accounts

In addition, the following provisions shall be part of this 17d-2 Agreement:

Securities Exchange Act of 1934 (“SEA”):

Section 15(g)

SEA Rules:

- SEA Rule 200 of Regulation SHO - Definition of Short Sales and Marking Requirements**
- SEA Rule 201 of Regulation SHO - Circuit Breaker**
- SEA Rule 203 of Regulation SHO - Borrowing and Delivery Requirements**
- SEA Rule 204 of Regulation SHO – Close-Out Requirement**
- SEA Rule 101 of Regulation M – Activities by Distribution Participants**
- SEA Rule 102 of Regulation M – Activities by Issuers and Selling Security Holders During a Distribution**
- SEA Rule 103 of Regulation M – Nasdaq Passive Market Making**
- SEA Rule 104 of Regulation M – Stabilizing and Other Activities in Connection with an Offering**
- SEA Rule 105 of Regulation M – Short Selling in Connection With a Public Offering**

- SEA Rule 604 of Regulation NMS – Display of Customer Limit Orders**
- SEA Rule 610(d) of Regulation NMS – Locking or Crossing Quotations**
- SEA Rule 611 of Regulation NMS – Order Protection Rule**
- SEA Rule 10b-5 Employment of Manipulative and Deceptive Devices^
- SEA Rule 17a-3 / 17a-4 - Records to Be Made by Certain Exchange Members, Brokers, and Dealers / Records to Be Preserved by Certain Exchange Members, Brokers, and Dealers^

[# FINRA shall not have Regulatory Responsibilities regarding notification or reporting to IEX.]

^ FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among [BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca Inc. effective December 16, 2011] Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., and Investors' Exchange LLC and the Long-Term Stock Exchange, Inc. as approved by the SEC on September 23, 2020, as may be amended from time to time.

**FINRA shall perform the surveillance responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4-700 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 4-700. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and IEX. 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 4-700 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Dual Members that would otherwise be performed by FINRA and IEX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Dual Members. Furthermore, because IEX and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, IEX and FINRA have allocated regulatory responsibility for those IEX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, IEX will review the Certification at least annually, or more frequently if required by changes in either the rules of IEX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add IEX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete IEX rules included in the then-current list of Common Rules that no longer qualify as common rules; and

confirm that the remaining rules on the list of Common Rules continue to be IEX rules that qualify as common rules.¹⁴ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all IEX rules that are substantially similar to the rules of FINRA for Dual Members of IEX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to IEX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add an IEX rule to the Certification that is not substantially similar to a FINRA rule; delete an IEX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification an IEX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁵

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission

¹⁴ See paragraph 2 of the Amended Plan.

¹⁵ The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Amended Plan.

believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the Amended Plan to clarify what is considered a Common Rule under the Plan, add Securities Exchange Act Rules 604, 610(d), and 611 to the Certification, eliminate the requirement that IEX provide FINRA a current list of members each quarter, and eliminate the requirements that IEX and FINRA notify Dual Members of the Agreement after the Effective Date by a uniform joint notice. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁶ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered. The Commission notes that FINRA has access to real-time information regarding Exchange membership via its Central Registration Depository.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-700. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-700, between the FINRA and IEX, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

¹⁶ See supra note 11 (citing to Securities Exchange Act Release No. 78434).

IT IS FURTHER ORDERED that IEX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-700.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(34).