

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90752; File No. SR-IEX-2020-20)

December 21, 2020

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 2.160 (Registration Requirements and Restrictions on Membership) to Adopt Temporary Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under the Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 15, 2020, the 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> IEX is filing with the Commission a proposed rule change to amend IEX Rule 2.160 (Registration Requirements and Restrictions on Membership) to adopt temporary Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under paragraph (i) of the Rule. The proposed rule change would harmonize the IEX Rule with a Financial Industry Regulatory Authority, Inc. (“FINRA”) rule amendment that extended the 120-day period during which certain individuals can function as a principal without

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

having successfully passed an appropriate qualifying examination, through April 30, 2021.<sup>5</sup>

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, 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 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.

The Exchange is proposing to amend IEX Rule 2.160(i) to adopt Supplementary Material .02 (Temporary Extension of the Limited Period for Registered Persons to Function

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<sup>5</sup> See Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-26); Exchange Act Release No. 90617 (December 9, 2020), 85 FR 81258 (December 15, 2020) (SR-FINRA-2020-43).

as Principals). Under the proposed amendment, a person designated to function as a principal prior to January 1, 2021 may continue to function as a principal without having successfully passed an appropriate qualifying examination until April 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 principals due to the continuing impact of the COVID-19 pandemic.<sup>6</sup> 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.

In response to COVID-19, earlier this year FINRA began providing temporary relief to member firms from FINRA rules and requirements via frequently asked questions ("FAQs") on its website.<sup>7</sup> Two of these FAQs<sup>8</sup> provided temporary relief to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for these examinations due to Prometric test center capacity issues.<sup>9</sup>

FINRA published the first FAQ on March 20, 2020, providing that individuals whom were 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

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<sup>6</sup> See supra note 5.

<sup>7</sup> 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>.

<sup>8</sup> See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

<sup>9</sup> 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 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. At this time, not all of these Prometric test centers have reopened at full capacity.

examination.<sup>10</sup> On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. On June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.<sup>11</sup>

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 Requirements).<sup>12</sup> 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.

Thereafter, 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.<sup>13</sup> Pursuant to this rule filing, individuals who

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<sup>10</sup> 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. IEX Rule 2.160(i) Supplementary Material .01 provides the same allowance to Members.

<sup>11</sup> See supra note 8.

<sup>12</sup> See supra note 5. 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.

<sup>13</sup> See supra note 5.

were designated prior to January 1, 2021 to function as a principal would have until April 30, 2021 to pass the appropriate qualifying examination.

The Exchange continues to closely monitor the impact of the COVID-19 pandemic on Members, investors, and other stakeholders. The COVID-19 conditions necessitating the extension of relief provided in FINRA’s FAQs and rule amendments persist and, in fact, appear to be worsening.<sup>14</sup> One of the impacts of COVID-19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations.<sup>15</sup> Although Prometric has begun reopening 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.<sup>16</sup> Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID-19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID-19 have led to a significant backlog of individuals who are waiting to sit for FINRA examinations.<sup>17</sup> In addition,

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<sup>14</sup> See, e.g., Meryl Kornfield, Jacqueline Dupree, Marisa Iati, Paulina Villegas, Siobhan O’Grady and Hamza Shaban, New daily coronavirus cases in U.S. rise to 145,000, latest all-time high, Wash. Post, November 11, 2020, <https://www.washingtonpost.com/nation/2020/11/11/coronavirus-covid-live-updates-us/>.

<sup>15</sup> 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>.

<sup>16</sup> 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>.

<sup>17</sup> Although an online test delivery service has been launched to help address the backlog, the General Securities Principal Exam (Series 24) is not available online. See *supra* note 12. FINRA is considering making additional qualifications examinations available remotely on a limited basis.

Members are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.<sup>18</sup>

As a result, Members continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19. Such potential disruptions may be further exacerbated and may even affect client services if Members cannot continue to keep principal positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the Member.

These ongoing, extenuating circumstances make it impracticable for Members to ensure that the individuals whom they have designated to function as a principal as set forth in IEX Rule 2.160(i) are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required by Supplementary Material .01 under Rule 2.160(i), or to find other qualified staff to fill these positions. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal examination is not available online. Therefore, IEX is proposing to extend the 120-day period during which an individual can function as a principal before having to pass an applicable qualification examination until April

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<sup>18</sup> 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>.

30, 2021.<sup>19</sup> The proposed rule change would apply only to those individuals who were designated to function as a principal prior to January 1, 2021. Any individuals designated to function as a principal on or after January 1, 2021 would need to successfully pass an appropriate qualification examination within 120 days.

The Exchange believes that this proposed extension of time is tailored to address the needs and constraints on a Member's 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 Members 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.

As noted below, 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)<sup>20</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>21</sup> in

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<sup>19</sup> If IEX seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond April 30, 2021, IEX will submit a separate rule filing to further extend the temporary extension of time.

<sup>20</sup> 15 U.S.C. 78f.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

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 application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of 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. The Exchange believes that the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under Rule 2.160 in response to the impacts of the COVID-19 pandemic that would otherwise result if the temporary rule amendment was not adopted. 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 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 Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

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 proposed extension of time will help minimize the impact of the COVID-19 outbreak on Members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. The Exchange further stated that the ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act in these capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 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.

the rules. The Exchange also explained that shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to social distancing guidelines consistent with the recommendations of public officials remain in place in various states.<sup>24</sup> In addition, 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.<sup>25</sup> Although, as the Exchange noted, FINRA has launched an online test delivery service to help address this backlog, the General Securities Principal (Series 24) Examination is not available online.<sup>26</sup> Nevertheless, the Exchange explained that the proposed rule change will provide needed flexibility to ensure that these positions remain filled and is tailored to address the constraints on Members' operations during the COVID-19 pandemic without significantly compromising critical investor protection.<sup>27</sup>

The Commission observed that the Exchange's proposal, like FINRA's analogous filing, provides only temporary relief from the requirement to pass certain qualification examinations within the 120-day period in the rules. As proposed, this relief would extend the 120-day period that certain individuals can function as principals through April 30, 2021. If a further extension of temporary relief from the rule requirements identified in this proposal beyond April 30, 2021 is required, the Exchange noted that it may submit a separate rule filing to extend the

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<sup>24</sup> See supra note 18.

<sup>25</sup> See supra notes 15 and 16. The Exchange states that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

<sup>26</sup> See supra note 17. FINRA is considering making additional qualification examinations available remotely on a limited basis.

<sup>27</sup> The Exchange states that Members remain subject to the continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as IEX rules.

effectiveness of the temporary relief under these rules.<sup>28</sup> 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.<sup>29</sup> Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>30</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2020-20 on the subject line.

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<sup>28</sup> See supra note 19.

<sup>29</sup> As noted above by the Exchange, this proposed temporary change is based on a recent filing by FINRA that the Commission approved with a waiver of the 30-day operative delay. See supra note 5, 85 FR at 81260.

<sup>30</sup> 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-IEX-2020-20. 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 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 SR-IEX-2020-20 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.<sup>31</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).