

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78502; File No. SR-IEX-2016-10)

August 8, 2016

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 9.218 to Specify the List of Violations Eligible for Disposition Under IEX's Minor Rule Violation Plan.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 4, 2016, the Investors Exchange LLC ("IEX" or "Exchange") filed with the Securities and Exchange Commission ("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 Securities Exchange Act of 1934 ("Act") [sic],⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC ("IEX" or "Exchange") [sic] is filing with the Securities and Exchange Commission ("Commission") [sic] a proposed rule change to amend IEX Rule 9.218 (Violations Appropriate for Disposition Under Plan Pursuant to Exchange Act Rule 19d-1(c)(2)) to specify the list of violations eligible for disposition under IEX Rule 9.216(b), (Procedure for Violation Under Plan Pursuant to Exchange Act Rule 19d-1(c)(2)) pursuant to IEX's

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.

Minor Rule Violation Plan (“MRVP”).⁶ The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.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 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

IEX Rule 9.216(b) provides procedures for disposition of certain rule violations designated as minor rule violations pursuant to a plan declared effective by the Commission in accordance with Section 19(d)(1) of the Act and Rule 19d-1(c)(2) thereunder. IEX’s MRVP allows IEX, or FINRA on its behalf, to impose a fine of up to \$2,500 on any Member or associated person of a Member for a minor violation of an

⁶ IEX’s MRVP was declared effective by the Commission on August 3, 2016. See, Securities Exchange Act Release No. 78474 (August 3, 2016).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

eligible rule. As proposed, IEX Rule 9.218 sets forth the rules eligible for disposition pursuant to IEX's MRVP as well as the recommended fine schedule for such dispositions. While IEX considers compliance with all of its rules to be important, inclusion of more technical rule violations in the MRVP is designed to provide for a risk-based allocation of FINRA and IEX resources to more high-risk matters because MRVP settlements are typically handled more efficiently and expeditiously.

The purpose of the MRVP is to provide reasonable but meaningful sanctions for minor or technical violations of rules when the conduct at issue does not warrant stronger, reportable disciplinary sanctions. The inclusion of a rule in IEX's MRVP does not minimize the importance of compliance with such rule, nor does it preclude IEX, or FINRA on its behalf, from choosing to pursue violations of eligible rules through an Acceptance, Waiver and Consent ("AWC") or Complaint if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the option to impose an MRVP sanction gives IEX, and FINRA on its behalf, additional flexibility to administer its enforcement program in the most effective and efficient manner, while still fully meeting IEX's remedial objectives in addressing violative conduct. FINRA, on behalf of IEX, and subject to IEX oversight, will examine and surveil for compliance with MRVP eligible rules in a manner consistent with the IEX regulatory program and will determine on a case-by-case basis whether disposition pursuant to the MRVP is appropriate.

In addition, Members and their associated persons may decline to accept a Minor Rule Violation, in which case FINRA, on behalf of IEX, may proceed in accordance with

the Exchange's disciplinary rules, which include hearing rights for formal disciplinary proceedings.⁸

IEX conducted a comprehensive review of its rules to determine the rules that are appropriate to add to the MRVP. As proposed, the rules included in the MRVP are as follows:

- Continuing education: Rule 2.160(p) specifies the continuing education requirements applicable to registered representatives of Members. Both FINRA and the Nasdaq Stock Market ("Nasdaq") include comparable rules in each of their MRVPs.⁹
- Books and records: Rule 4.511 requires IEX Members to comply with FINRA Rule 4511 as if such rule were part of the Exchange's rules, and specifies applicable books and records requirements. FINRA Rule 4511 is included in FINRA's MRVP.
- Furnishing of records: Rule 4.540 requires IEX Members to furnish specified records to the Exchange, upon request and in a time and manner required by the Exchange. The rule also provides that the Exchange shall be allowed access, at any time, to the books and records of the Member in order to obtain or verify information related to transactions executed on or through the Exchange or activities relating to the Exchange. This rule is comparable to BATS BZX Exchange, Inc. ("BZX") Rule 4.2, which is included in the BZX MRVP.¹⁰
- Supervision: Rule 5.110 requires that each Member establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules; including, as specified, written procedures, internal inspections, transaction review and investigation, and investigation of applicants for registration. Violations of Rule 5.110 would be included in the MRVP where the underlying

⁸ See, Chapter 9 generally.

⁹ See FINRA Rules 9217 and 1250, Nasdaq Rules 1120 and IM-9216.

¹⁰ See BZX Rule 8.15.

violative conduct is also included in the MRVP.¹¹ FINRA treats its comparable Rule 3110 in the same manner.

- Automated submission of trading data requested: Rule 8.220 requires Members to submit trade data in the specified automated format upon request by IEX. This rule is comparable to FINRA Rule 8211 which is included in FINRA’s MRVP.
- Market Maker two-sided quotation requirement: Rule 11.151(a)(1) requires that a Member registered as a Market Maker comply with the specified continuous two-sided quotations requirements. This rule is comparable to BZX Rule 11.8(a)(1) which is included in BZX MRVP.
- Short sales: Rule 11.290 requires, among other things, that all sell orders be marked long, short, or short exempt. FINRA includes Rule 200(g) of SEC Regulation SHO (Failure to accurately mark sell orders of equity securities) in its MRV. Similarly, BZX includes its Rule 11.19 requirement to identify short sale orders as such in its MRV plan.
- Locking or crossing quotations in NMS stocks: Rule 11.310 provides in relevant part that Users of IEX shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation previously disseminated pursuant to an effective national market system plan. This rule is comparable to BZX Rule 11.20, which is included in BZX MRVP.
- Order audit trail system requirements: Rule 11.420 specifies the order audit trail system requirements applicable to Members and persons associated with a Member, and in relevant part also requires compliance with FINRA Rules 7440 and 7550 as if such rule were part of IEX’s rules. This rule is comparable to Nasdaq Rules 6954 and 6955,¹² as well as FINRA Rules 7440 and 7450, each of which are included in the Nasdaq and FINRA MRVP.

In addition, as proposed, Rule 9.218 includes the following recommended fine schedule for minor rule violation dispositions of the rules included therein:

Occurrence*	Individual	Member
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¹¹ For example, if FINRA (on behalf of IEX) identified that a short sale order marking violation (Rule 11.290) was attributable to a supervision deficiency, the supervision deficiency could be included in a disposition under the MRVP.

¹² Nasdaq Rules 6954 and 6955 were renumbered as Rules 7440A and 7450A respectively.

First time fined	\$100	\$500
Second time fined	\$300	\$1,000
Third time fined	\$500	\$2,500

* Within a “rolling” 12-month period.

The recommended fine schedule is based on BZX Rule 8.15, Interpretations and Policies .01. The recommended fine schedule is intended to provide transparency to IEX Members and associated persons with respect to administration of the Exchange’s MRVP.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(5),¹⁴ (6)¹⁵ and (7)¹⁶ of the Act, in particular.

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act¹⁷ because it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the proposed rule change will provide the Exchange with the ability to impose reasonable but meaningful sanctions for minor or technical violations of rules when the conduct at issue does not warrant stronger, reportable disciplinary sanctions, which is consistent with the

¹³ 15 U.S.C. 78f

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(6).

¹⁶ 15 U.S.C. 78f(b)(7).

¹⁷ See supra note 14 [sic].

protection of investors and the public interest. Further, the Exchange believes that inclusion of the specified rules in the Exchange's MRVP, as well as the recommended fine schedule, would provide FINRA, on behalf of the Exchange, with the ability to administer its enforcement program in the most effective and efficient manner, while still fully meeting IEX's remedial objectives in addressing violative conduct, which is also consistent with the protection of investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Section 6(b)(7) of the Act¹⁸ because it would provide a fair procedure for the disciplining of IEX Members and associated persons. As discussed above, under the Exchange's disciplinary rules a Member or associated person may decline to accept a Minor Rule Violation, in which case FINRA, on behalf of IEX, may proceed in accordance with the Exchange's disciplinary rules, which include hearing rights for formal disciplinary proceedings. The Exchange's rules governing formal disciplinary rules have already been approved by the Commission, which included a finding that IEX's rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act¹⁹ in that they provide fair procedures for the disciplining of members and persons associated with members.²⁰

The Exchange also believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers and dealers in that it will be applicable to all Members.

¹⁸ See supra note 16 [sic].

¹⁹ See supra, notes 15 [sic] and 16 [sic].

²⁰ See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

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

IEEX 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 will allow for a quicker, more efficient means to resolve minor violations of eligible rules, potentially lessening the burden on firms in those circumstances where, absent the rule's inclusion in the MRVP, a more resource-intensive formal process might ensue.

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 filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

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 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

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ 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 at the time of the launch of its operation as a national securities exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As noted above, the IEX MRVP, including the proposed violations, was declared effective by the Commission on August 3, 2016.²⁷ The proposed rule change merely incorporates the list of violations included in the MRVP into IEX Rule 9.218. For this reason, 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

change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ See supra note 6.

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

Commission takes such action, the Commission shall institute proceedings 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2016-10 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2016-10. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2016-10, 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

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12), (59).