

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82784; File No. SR-IEX-2018-04)

February 27, 2018

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 5.170 to Reflect an Update to a FINRA Rule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 21, 2018, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Commission a proposed rule change to amend Rule 5.170 to reflect an update to a rule of the Financial Industry Regulatory Authority (“FINRA”) incorporated by reference therein.

The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6)

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

thereunder.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 statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 5.170 to reflect an update to a FINRA rule incorporated by reference therein. On April 7, 2016, the Commission approved a FINRA proposed rule change to adopt new FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook, which addresses accounts opened or established by associated persons of FINRA members at firms other than the firm with which they are associated (the "FINRA Rule Filing"). As part of the FINRA Rule Filing, FINRA also deleted NASD Rule 3050 and Incorporated New York Stock Exchange ("NYSE") Rules 407, 407A, and Incorporated NYSE Rule Interpretation 407, each of which governed the obligations of FINRA member firms and their associated persons with respect to transactions effected by

⁷ 17 CFR 240.19b-4.

such associated persons in accounts established outside of the member firm.⁸ Thus FINRA Rule 3210 updated and consolidated into the FINRA Rulebook NASD Rule 3050 and certain Incorporated NYSE rules.⁹

NASD Rule 3050 is incorporated by reference in Exchange Rule 5.170 (Transactions for or by Associated Persons), which provides that “Members and persons associated with a Member shall comply with NASD Rule 3050 as if such Rule were part of IEX’s Rules.”

Accordingly, in view of the FINRA rule change whereby NASD Rule 3050 was consolidated into FINRA Rule 3210, the Exchange proposes to update the reference to NASD Rule 3050 with a reference to FINRA Rule 3210. As proposed, IEX Members would be subject to the requirements of FINRA Rule 3210 rather than NASD Rule 3050. A description of the requirements of FINRA Rule 3210, and the differences between FINRA Rule 3210 and former NASD Rule 3050, are described in the FINRA Rule Filing.¹⁰

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹¹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange notes that in approving the FINRA Rule Filing,

⁸ See Exchange Act Release No. 77550 (April 7, 2016), 81 FR 21924 (April 13, 2016) (Order Approving File No. SR-FINRA-2015-029).

⁹ Id.

¹⁰ Id.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

the Commission stated that it “believes that the proposal would help protect investors and the public interest by establishing a framework through which a member can adequately supervise securities-related activities of their associated persons at firms other than the one with which they are associated... [and that the] rule makes the core supervisory obligation more operationally workable for employer firms.” The Exchange agrees with the Commission and believes the proposed rule change is also consistent with the Act because it will provide greater clarity to Members regarding IEX’s rules.

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 Exchange does not believe that the proposed rule change will result in a burden on intra-market competition since it will apply equally to all Members. Further, as described in the FINRA Rule Filing and the SEC approval order thereof, FINRA Rule 3210 enables FINRA members to design a supervisory system that suits their respective business model and risk profiles. Further, FINRA noted in the FINRA Rule Filing, because FINRA Rule 3210 is consistent with prior NASD Rule 3050, current requirements and longstanding practice, it will not impose additional burdens on FINRA members. The Exchange believes that these factors mitigate against any disparate burden on IEX Members. The Exchange also does not believe that the proposed rule change will result in a burden on inter-market competition, since it is designed to address regulatory requirements rather than competitive considerations.

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 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to 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 proposal may become operative immediately upon filing. According to the Exchange, waiver of the operative delay will help to avoid any potential confusion that may otherwise occur on the part of IEX Members as to the requirements of IEX Rule 5.170. The Commission believes that the proposed rule change raises no new or novel issues and that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

proposal operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2018-04 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-2018-04. This file number should be included in the subject line if email is used. To help the Commission process and review your

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet website at www.iextrading.com. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2018-04 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).