



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97980; File No. SR-IEX-2023-07]

### **Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 2.160 to Provide Eligible Individuals Another Opportunity to Elect to Participate in the Maintaining Qualifications Program**

July 25, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 13, 2023, 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 Act,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to amend IEX Rule 2.160 to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program. The Exchange has designated this proposal as non-controversial

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.<sup>7</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 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

IEX is proposing to amend Supplementary Material .01 to IEX Rule 2.160(p)(c) to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program ("MQP"). This proposed rule change is based on a substantively identical filing made by the Financial Industry Regulatory Authority, Inc. ("FINRA"), which established a second enrollment period for the MQP that ends on December 31, 2023 ("Second Enrollment Period").<sup>8</sup>

On November 28, 2022, IEX amended IEX Rule 2.160 to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> See Securities Exchange Act Release No. 97184 (March 22, 2023) 88 FR 18359 (March 28, 2023) (SR-FINRA-2023-005) ("FINRA MQP Second Enrollment Period Filing").

completing annual continuing education through the new MQP.<sup>9</sup> By that time, however, the First Enrollment Period, defined below, had expired leaving many eligible individuals unable to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualifications.

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative or principal-level examination or if they obtained a waiver of such examination(s) (the “two-year qualification period”). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.<sup>10</sup> Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Supplementary Material .01 to IEX Rule 2.160(p)(c) (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Subparagraph (c) of Rule 2.160(p)), describes a look-back provision that extended the option of participating in the MQP to individuals who: (1) were registered in a representative or principal registration category with FINRA within two years immediately preceding March 15, 2022; or (2) were participating in the Financial Services Affiliate Waiver Program (“FSAWP”)<sup>11</sup> pursuant to Supplementary Material

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<sup>9</sup> See Securities Exchange Act Release No. 96473 (December 9, 2022) 87 FR 77152 (December 16, 2022) (SR-IEX-2022-11).

<sup>10</sup> The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (i.e., they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

<sup>11</sup> The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. FINRA stopped accepting new participants for the FSAWP beginning on March 15, 2022;

.01 to Rule 2.160(g) immediately preceding March 15, 2022 (collectively, “Look-Back Individuals”).

In the FINRA MQP Second Enrollment Period Filing, FINRA noted that in Regulatory Notice 21-41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the “First Enrollment Period”). In addition to the announcement in Regulatory Notice 21-41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (“FinPro”) accounts.<sup>12</sup> In that same filing, FINRA noted that shortly after the First Enrollment Period ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP.<sup>13</sup> In addition, FINRA noted that the original six-week enrollment period may not have provided Look-Back Individuals with adequate time to evaluate whether they should participate in the MQP.<sup>14</sup> Thus, FINRA both established a Second Enrollment Period for the MQP, which lasts until December 31, 2023, and set forth a robust communication campaign involving more active outreach to enhance public awareness of Second Enrollment Period for the MQP.<sup>15</sup>

IEX, like FINRA, believes that greater public awareness of the MQP and FINRA’s additional outreach efforts, coupled with the longer duration of the Second Enrollment Period (the first enrollment period last six weeks), should help notify as many Look-Back-Individuals as

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however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

<sup>12</sup> Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

<sup>13</sup> See supra note 8.

<sup>14</sup> See Id.

<sup>15</sup> See Id.

possible of their options with respect to the MQP, and should provide them ample time to decide whether to participate in the MQP.<sup>16</sup>

Thus, IEX proposes to amend Supplementary Material .01 to IEX Rule 2.160(p)(c) to conform with FINRA's recent amendments to FINRA Rule 1240.01. Specifically, IEX proposes to add language stating that persons eligible for the MQP look-back period either: (i) had to elect to participate with FINRA in the MQP by March 15, 2022, or (ii) shall make their election to participate with IEX in the MQP during a new enrollment period that begins on [date of the filing] and ends on December 31, 2023. IEX also proposes to add language stating that Look-Back Individuals who participate in the MQP shall have a participation period of five years following the termination of their registration categories, and that they must complete any prescribed 2022 and 2023 continuing education content by March 31, 2024.<sup>17</sup> Lastly, IEX proposes to delete the last sentence of Supplementary Material .01 to IEX Rule 2.160(p)(c) that describes how FINRA adjusted participation periods for individuals who enrolled in the MQP during the first enrollment period.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through their FinPro accounts.<sup>18</sup> IEX also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a

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<sup>16</sup> See Id.

<sup>17</sup> Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of \$100 for both 2022 and 2023 at the time of their enrollment.

<sup>18</sup> See Second Enrollment Period, <https://www.finra.org/registration-exams-ce/continuing-education/CE-transformation/mqp#Second-Enrollment>.

maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.<sup>19</sup>

IEX has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. The operative date will be the date of the filing of the proposed rule change if the Commission grants the waiver.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Sections 6(b)<sup>20</sup> and 6(b)(5) of the Act,<sup>21</sup> in particular, in that it is designed 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. IEX believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, protecting investors with the advantage of greater experience among individuals working in the industry. IEX believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

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<sup>19</sup> For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

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

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

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>22</sup> which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(c)(3) of the Act,<sup>23</sup> which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange.

Finally, as described in the Purpose section, the proposed rule change seeks to align the Exchange Rules with changes to FINRA rules which have been allowed to take effect by the Commission.<sup>24</sup> Thus, this rule change raises no novel issues that have not already been considered by and accepted by the Commission.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets.

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

IEX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and Rule 19b-4(f)(6) thereunder.<sup>26</sup> Because the proposed rule change does not: (i) significantly

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<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78f(c)(3).

<sup>24</sup> See supra note 8.

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(6).

affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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 Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>27</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>28</sup> 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 proposal may become operative immediately upon filing. IEX has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. IEX also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, IEX indicated that the immediate operation of the proposed rule change is also appropriate because it would help to further notify Look-Back Individuals of their options and provide additional time for them to consider whether they wish to participate in the MQP program before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the

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<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>29</sup>

At any time within 60 days of the filing of such 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)<sup>30</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2023-07 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 SR-IEX-2023-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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<sup>29</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).

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-IEX-2023-07 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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