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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 04

Amendment No. (req. for Amendments *)

Filing by Investors' Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|--|---|--|--|--|---|
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
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| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> |
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Rule

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| <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) |
| <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) |
| <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend Certain IEX Rules to Permit, and in Some Instances Require, Electronic Service and Filing of Documents in Disciplinary and Other Proceedings and Appeals in Conformity with Recent Changes Made by FINRA

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Nathaniel Last Name * Kolodny

Title * Lead Regulation Counsel

E-mail * nathaniel.kolodny@iextrading.com

Telephone * (646) 343-2034 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Investors' Exchange LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/31/2023

(Title *)

By Nathaniel Kolodny

Lead Regulation Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Nathaniel
Kolodny

Digitally signed by Nathaniel
Kolodny
Date: 2023.03.31 17:20:05
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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Electronic Filing and Service 19b-4 SE

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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Electronic Filing and Service Ex 1_SE

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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Electronic Filing and Service Ex 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the Investors Exchange LLC (“IEX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend IEX Rules 9.132, 9.133, 9.135, 9.146, 9.321, 9.341, 9.349, 9.351, 9.522, 9.524, 9.525, 9.559 and 9.630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”).

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act² and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.³

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A).

³ 17 CFR 240.19b-4.

proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Claudia Crowley
Chief Regulatory Officer
Investors Exchange LLC
(917) 509-9001

Nathaniel Kolodny
Lead Regulation Counsel
Investors Exchange LLC
(646) 343-2034

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

(a) Purpose

The Exchange proposes to amend IEX Rules 9.132, 9.133, 9.135, 9.146, 9.321, 9.341, 9.349, 9.351, 9.522, 9.524, 9.525, 9.559 and 9.630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals in conformity with recent changes by FINRA.⁴

Background

In 2020, following the outbreak of the Coronavirus Disease (“COVID-19”), FINRA temporarily amended certain of its rules, including rules related to the method of service and filing in disciplinary proceedings before the Office of Hearing Officers (“OHO”) and appeals before the National Adjudicatory Council, among other types of administrative proceedings (the “temporary amendments”).⁵ The temporary amendments allowed, and in some instances

⁴ See Securities Exchange Act Release Nos. 94654 (April 8, 2022), 87 FR 22264 (April 14, 2022) (SR-FINRA-2022-009) (“Electronic Service Amendments Filing”).

⁵ See Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (SR-FINRA-2020-015) (Notice and immediate effectiveness of filing to temporarily amend certain timing, method of service and other procedural requirements in FINRA Rules during the outbreak of COVID-19). FINRA extended the temporary amendments several times before filing to make certain of the aforementioned amendments permanent. The temporary amendments included rule changes to permit the conduct of virtual hearings (i.e., FINRA Rules 9261 and 9830), which rule changes are not being included in this proposal. Rather, the Exchange is solely copying a subset of rules covered by the temporary

required, FINRA to serve certain documents on parties by electronic mail (“email”) and required parties to file or serve documents by email, unless the parties agreed to an alternative method of service.⁶

In support of its Electronic Service Amendments Filing, FINRA noted that advances in technology and its availability made filing and service permitted by the temporary amendments more efficient than under FINRA’s “original” (non-amended) rules.⁷ Moreover, FINRA determined that electronic service and filing is beneficial for parties, panelists and FINRA staff.⁸ FINRA also noted that the Commission likewise amended its rules in November 2020 to require electronic filing and service of documents in its administrative proceedings.⁹ For these reasons, FINRA determined that making permanent the temporary amendments would similarly improve and modernize FINRA’s operations.¹⁰ In 2022, the Commission approved FINRA’s Electronic Service Amendments Filing, thereby making permanent the temporary amendments to FINRA’s rules regarding electronic service and filing, with some modifications.¹¹

Proposal

To likewise improve and modernize its rules, the Exchange proposes to modify certain of the rules in Chapter 9 of the IEX Rule Book to allow for electronic service and filing of

amendments as discussed herein.

⁶ See Id.

⁷ See Electronic Service Amendments Filing, supra note 4, 87 FR 22267.

⁸ See Id.

⁹ See Amendments to the Commission’s Rules of Practice, Securities Exchange Act Release No. 90442 (November 17, 2020), 85 FR 86464 (File No. S7-18-15) (December 30, 2020) (codified at 17 CFR 201 (2020)).

¹⁰ See Electronic Service Amendments Filing, supra note 4, 87 FR 22266-67.

¹¹ See Securities Exchange Act Release No. 95147 (June 23, 2022), 87 FR 38803 (June 29, 2022) (SR-FINRA-2022-009) (order approving change to certain FINRA rules to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals) (“Electronic Service Amendments Approval Order”). The Electronic Service Amendments Approval Order related to FINRA Rules 1012, 1015, 6490, 9132, 9133, 9135, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9559 and 9630 (collectively, “the Electronic Service Amendments”).

documents in disciplinary and other proceedings in conformity with the Electronic Service Amendments.¹² IEX and FINRA are parties to a regulatory service agreement pursuant to which FINRA provides various regulatory services to and on behalf of IEX (“RSA”).¹³ Among the services that FINRA provides are disciplinary and dispute resolution services involving IEX Members¹⁴, including adjudicating matters on IEX’s behalf through FINRA’s OHO.

Consistent with the Electronic Service Amendments, the Exchange proposes to amend certain of its disciplinary rules related to filing, service and other procedural requirements and appeals. The proposed rule change includes provisions to allow, and in some instances require, FINRA, acting on behalf of IEX, to serve certain documents on parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator.¹⁵ In addition, to support the transition to email service and filing, the Exchange proposes to require parties in OHO proceedings to file and serve all parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.

The proposed rule change would permit service of documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending. The Exchange intends to elect email service whenever possible. If FINRA, acting on behalf of IEX, has

¹² Consistent with the Electronic Service Amendments Approval Order, the Exchange is not proposing to permit electronic service of an initial complaint on a respondent due to heightened fair process concerns. As is the case today, the only permissible methods of serving the initial complaint are by hand, mail or courier. See IEX Rule 9.131(b) (requiring that service be pursuant to IEX Rule 9.134).

¹³ See IEX Rule 9.001.

¹⁴ See IEX Rule 1.160(s).

¹⁵ To the extent that a party lacks the ability to use or access technology needed to file, serve or accept service by email, FINRA, as adjudicator, may order an alternative method of service upon a showing of good cause. See Electronic Service Amendments Filing, supra note 4, 87 FR 22265.

knowledge that the address used for service is not current or not functional (i.e., FINRA receives a bounce back or other message indicating that there was a failure to deliver the email), FINRA will use other permissible methods of service until it can verify the party's email address.¹⁶ The Exchange notes that, in most cases, FINRA and the relevant party, or their counsel, will have already engaged in communications prior to the service of documents or other information. Accordingly, in most cases, FINRA will already have information regarding the relevant party, or their counsel's, preferred method of service.

FINRA Rule Series 9000 contains procedural requirements that apply to FINRA's own disciplinary and adjudicatory processes. Chapter 9 (Code of Procedure) of IEX's Rule Book contains filing, service and other procedural requirements that intentionally track the requirements in FINRA's Rule Series 9000 in order to facilitate FINRA acting on IEX's behalf when called upon to do so under the RSA. Due to the enactment of the Electronic Service Amendments, IEX's Chapter 9 rules are currently inconsistent with some of the rules in FINRA Rule Series 9000, which now allows, and in some instances requires, FINRA to serve certain documents on parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator. IEX is therefore proposing conforming changes to its rules to align them with the Electronic Service Amendments.

The proposed rule changes would permit IEX (and by extension FINRA, when acting on behalf of IEX) to serve documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending. The proposed amendments also contain provisions to

¹⁶ As indicated in the proposed rule text, the Exchange will consider service by email complete upon sending of the relevant document or other information. This is consistent with service by mail under the current rules.

ensure that parties who lack the ability to use or access email can request relief from the Adjudicator to use an alternative method of service upon a showing of good cause.¹⁷

Chapter 9 of IEX's Rule Book, among other things, sets forth the procedure for IEX proceedings for disciplining a member, associated person or formerly associated person. IEX Rule Series 9.130 is of general applicability to all proceedings set forth in Chapter 9, unless a rule specifically provides otherwise. IEX Rules 9.132(b)¹⁸, 9.133(b)¹⁹, and 9.146(l)²⁰ provide that the documents and other information governed by those rules be served pursuant to IEX Rule 9.134, which permits service on the parties using the following methods: (1) personal service, (2) mail, or (3) courier.²¹ IEX Rule 9.134 does not permit service by email. The proposed rule change would amend IEX Rule 9.132(b) to allow IEX (or FINRA acting on behalf of IEX) to serve the relevant documents or information by email, and amend IEX Rules 9.133(b) and 9.146(l) to require parties to serve documents by email, unless an alternative method of service is ordered by the Adjudicator.

The proposed rule changes would also amend IEX Rule 9.135 to add paragraph (d), which would require parties in OHO proceedings to file and serve the parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.²² As noted above, this will ensure that all parties have accurate electronic contact information for all other parties.

¹⁷ See supra note 15

¹⁸ See IEX Rule 9.132(b) (Service of Orders, Notices, and Decisions by Adjudicator; How Served).

¹⁹ See IEX Rule 9.133(b) (Service of Papers Other Than Complaints, Orders, Notices or Decisions; How Served).

²⁰ See IEX Rule 9.146(l) (Motions; General).

²¹ See IEX Rule 9.134 (Methods of, Procedures for Service).

²² See proposed IEX Rule 9.135 (Filing of Papers with Adjudicator; Procedure)

IEX Rule Series 9.300 sets forth the procedures for review of disciplinary proceedings by the IEX Board²³ and for applications for SEC review. IEX Rules 9.321, 9.341(c), 9.349(c), and 9.351(e) require IEX to serve documents in connection with those proceedings. IEX proposes to amend IEX Rules 9.321, 9.341(c), 9.349(c), and 9.351(e) to allow for email as a method of service.²⁴

IEX Rule Series 9.520 sets forth the procedures for eligibility proceedings and review of those proceedings by the IEX Board. IEX Rules 9.522(a)(4)²⁵, 9.524(a)(3)(A) and (B)²⁶, 9.524(b)(3)²⁷, and 9.525(e)²⁸ require IEX to serve documents in connection with those proceedings, but do not allow for email as a method of service. The proposed rule change would amend those rules to allow for email as a method of service.²⁹ Further, under the proposed change to IEX Rule 9.524(a)(3)(A) and (B), the disqualified member or sponsoring member would be required to serve documents and the exhibit and witness lists by email unless an alternative method of service is ordered by the Adjudicator.³⁰ Additionally, IEX proposes to add new paragraph (d) to IEX Rule 9.524, which states that service by email shall be deemed complete upon sending the documents or decision.³¹

²³ See IEX Rule 1.160(e).

²⁴ See proposed IEX Rules 9.321 (Transmission of Record); 9.341(c) (Oral Argument; Notice Regarding Oral Argument); 9.349(c) (IEX Appeals Committee Formal Consideration; Decision; Issuance of Decision after Expiration of Call for Review Period); 9.351(e) (Discretionary Review by IEX Board; Issuance of Decision After Expiration of Call for Review Period).

²⁵ See IEX Rule 9.522(a)(4) (Initiation of Eligibility Proceeding; Member Regulation Consideration; Service).

²⁶ See IEX Rule 9.524(a)(3)(A) and (B) (IEX Appeals Committee Consideration; Transmission of Documents).

²⁷ See IEX Rule 9.524(b)(3) (IEX Appeals Committee Consideration; Issuance of Decision After Expiration of Call for Review Period).

²⁸ See IEX Rule 9.525(e) (Discretionary Review by the IEX Board; Issuance of Decision).

²⁹ See proposed IEX Rules 9.522(a)(4); 9.524(a)(3)(A) and (B); 9.524(b)(3); and 9.525(e).

³⁰ See proposed IEX Rule 9.524(a)(3)(A) and (B).

³¹ See proposed IEX Rule 9.524(c).

IEX Rule Series 9.550 sets forth the procedures for expedited proceedings³² and the ability of the IEX Board to call for review a proposed decision prepared under IEX Rule Series 9.550. IEX Rule 9.559(h) (Transmission of Documents) sets forth the timing and method of service requirements for IEX (or FINRA acting on behalf of IEX) to provide documents considered in commencing the expedited proceeding³³ and for the parties to exchange proposed exhibit and witness lists³⁴ in advance of an expedited proceeding.³⁵ IEX Rule 9.559(h) does not allow for email as a method of service. IEX proposes to amend IEX Rules 9.559(h)(1) and (2) to allow for email service, unless an alternative method of service is ordered by the Adjudicator and to remove text from Rule 9.559(h)(2) that requires that documents served by email must also be served by overnight courier or personal service.³⁶ IEX Rule 9.559(q)(2)³⁷ requires the IEX Board to serve its decision when it issues one, and IEX Rule 9.559(q)(5)³⁸ requires the IEX Board to serve the decision on the parties and all members with which the respondent is associated. IEX Rules 9.559(q)(2) and (5) also do not allow for email as a method of service. The proposed rule change would amend Rule 9.559(q)(2) and (5) to allow for email as a method of service. Further, IEX proposes to add new paragraph (s) to IEX Rule 9.559, which states that service by email shall be deemed complete upon sending the documents or decision.³⁹

³² Expedited proceedings are available in a subset of disciplinary proceedings set forth in IEX Rules 9.552 through 9.559. Examples include IEX Rule 9.552 (Failure to Provide Information or Keep Information Current) and IEX Rule 9.555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

³³ See IEX Rule 9.559(h)(1).

³⁴ See IEX Rule 9.559(h)(2).

³⁵ FINRA also amended its Rule 9.559(h) to eliminate the requirements that, if the specified documents are served by facsimile or email, they must also be served by either overnight courier or personal delivery. IEX's amendment conforms IEX Rule 9.559(h)(1) and (2) to match FINRA's rule.

³⁶ See proposed IEX Rule 9.559(h)(2).

³⁷ See IEX Rule 9.559(q)(2).

³⁸ See IEX Rule 9.559(q)(5).

³⁹ See proposed IEX Rule 9.559(s).

Additionally, the proposed amendment also makes a non-substantive change to correct a typographical error in the rule's title (adding a period to "9550").

IEX Rule Series 9.600 sets forth the procedures for Members to seek exemptive relief from a variety of IEX rules, including appealing a decision of the Chief Regulatory Officer, made pursuant to IEX Rule 9.620. IEX Rules 9.630(e)(1) and (2)⁴⁰ require the IEX Board to serve its decision pursuant to IEX Rule 9.134, which does not allow for email as a method of service. The proposed rule change would amend IEX Rule 9.630(e) to allow for email as an alternative method of service.⁴¹ Additionally, IEX proposes to add new paragraph (f) to IEX Rule 9.630, which states that service by email shall be deemed complete upon sending the documents or decision.⁴²

IEX believes these proposed changes will modernize its rules and make service and filing more efficient and effective because it will align IEX's service and filing rules with those of FINRA. Email technology is widely available, and use of electronic methods of service and filing is common practice in the courts and other regulatory agencies, including the Commission.⁴³ At the same time, the proposal provides for alternative methods of service for parties who lack the ability to use or access technology needed to send or receive documents electronically.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can

⁴⁰ See IEX Rule 9.630(e) (Appeal; Decision).

⁴¹ See proposed IEX Rule 9.630(e)(1) and (2).

⁴² See proposed IEX Rule 9.630(f).

⁴³ See supra note 9.

implement the proposed rule change immediately.

(b) Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act⁴⁴, in general, and furthers the objectives of Section 6(b)(5) of the Act⁴⁵, in particular, because it is 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.⁴⁶

IEX believes that the proposed rule change protects investors and the public interest by requiring use of broadly available technology to make service and filing processes more efficient and effective. IEX's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons.

The proposed rule change promotes efficiency in these processes by aligning IEX's rules with FINRA's rules that permit electronic service and filing in most instances. To ensure that documents are effectively sent and received, IEX (in line with FINRA's requirements) is proposing to require parties to provide and update their contact information, including their email address, during the course of a proceeding. These amendments reduce the reliance on paper documents in favor of more efficient electronic formats. IEX concurs with the Commission and

⁴⁴ 15 U.S.C. 78f(b).

⁴⁵ 15 U.S.C. 78f(b)(5).

⁴⁶ 15 U.S.C. 78f(b)(5).

FINRA in the belief that adopting rules on electronic service and filing is especially important as hybrid and remote work become more common.

IEX believes as well that the proposed rule change includes important safeguards to ensure fairness. For example, there are procedures in place for persons who lack the ability to use or access technology necessary to send or receive documents electronically. Such parties will have the ability to request relief from the Adjudicator to file or serve documents by another method.⁴⁷ As discussed in the Purpose section, based on FINRA's representations about its experience of operating under its temporary amendments, which have permitted electronic service and filing since mid-2020, IEX anticipates that requests to use non-electronic methods of service will be rare. In addition, the proposed rule change balances the interests of fairness and efficiency. Service of the initial complaint will continue to occur by hand, mail or courier, rather than by electronic means, thus ensuring there is satisfactory notice and fair process. Thus, the proposed rule change represents a significant step toward modernizing the service and filing processes in a manner that will protect investors and the public interest by promoting efficiency while preserving fair process.

Additionally, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, as discussed in the Purpose section, this proposed rule change is based on FINRA

⁴⁷ See supra note 15.

rule changes approved by the Commission in 2022.⁴⁸ Therefore, IEX believes there is nothing in this proposal that is new or novel that has not been previously considered by the Commission.

4. 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. To the contrary, IEX believes that the proposed rule change reduces the burden on competition because it eliminates inconsistencies between IEX's Code of Procedure (Chapter 9 of the IEX Rule Book) and FINRA's rules governing the adjudication of disputes and disciplinary proceedings. Additionally, IEX notes that the proposed rule change is not intended to address competitive issues but is designed to modernize the service and filing process in harmonization with the approved FINRA Rules.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act⁴⁹ and Rule 19b-4(f)(6) thereunder.⁵⁰

The Exchange asserts that the proposed rule change (i) will not significantly affect the

⁴⁸ See *supra* note 11.

⁴⁹ 15 U.S.C. 78s(b)(3)(A).

⁵⁰ 17 CFR 240.19b-4(f)(6).

protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with 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, or such shorter time as the Commission may designate.

The Exchange believes that this filing is non-controversial and eligible to become effective immediately because the proposal provides a more uniform standard for disciplinary rules across self-regulatory organizations and thereby enables the Exchange to modernize the service and filing process related to the conduct disciplinary hearings. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the proposed rule change is based on the approved FINRA Electronic Service Amendments.⁵¹ As such the proposal does not raise any new or novel issues not previously considered by the Commission.

The Exchange requests that the Commission waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii)⁵², so that the proposed rule change may become operative immediately. Waiver of the operative delay would allow the proposed changes, which are designed to modernize the service and filing process related to the conduct disciplinary hearings in alignment with the approved FINRA Rules, to be operative on the date of filing. For the foregoing reasons,

⁵¹ See generally Electronic Service Amendments Approval Order, *supra* note 11.

⁵² 17 CFR 240.19b-4(f)(6)(iii).

the Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “noncontroversial” rule change under paragraph (f)(6) of Rule 19b-4.⁵³ 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on a subset of the approved FINRA Rules that relate to the electronic service of documents as discussed in the Purpose and Statutory Basis sections above, as set forth in SR-FINRA-2022-009.⁵⁴

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

⁵³ 17 CFR 240.19b-4(f)(6).

⁵⁴ See generally Electronic Service Amendments Approval Order, supra note 11. The Exchange notes that one non-substantive difference is that FINRA Rule 9559 refers to “email” service (the remainder of the relevant FINRA rules refer to “electronic mail” service), while IEX’s proposed rule change refers to “electronic mail” service throughout.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 -); File No. SR-IEX-2023-04

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Several IEX Rules to Permit, and in Some Instances Require, Electronic Service and Filing of Documents in Disciplinary and Other Proceedings.

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 (date), the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II and III 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) of Act,⁴ the Exchange is filing with the Commission a proposed rule change to amend IEX Rules 9.132, 9.133, 9.135, 9.146, 9.321, 9.341, 9.349, 9.351, 9.522, 9.524, 9.525, 9.559 and 9.630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”).

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).

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁵ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁶

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 IEX Rules 9.132, 9.133, 9.135, 9.146, 9.321, 9.341, 9.349, 9.351, 9.522, 9.524, 9.525, 9.559 and 9.630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals in conformity with recent changes by FINRA.⁷

Background

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4.

⁷ See Securities Exchange Act Release Nos. 94654 (April 8, 2022), 87 FR 22264 (April 14, 2022) (SR-FINRA-2022-009) (“Electronic Service Amendments Filing”).

In 2020, following the outbreak of the Coronavirus Disease (“COVID-19”), FINRA temporarily amended certain of its rules, including rules related to the method of service and filing in disciplinary proceedings before the Office of Hearing Officers (“OHO”) and appeals before the National Adjudicatory Council, among other types of administrative proceedings (the “temporary amendments”).⁸ The temporary amendments allowed, and in some instances required, FINRA to serve certain documents on parties by electronic mail (“email”) and required parties to file or serve documents by email, unless the parties agreed to an alternative method of service.⁹

In support of its Electronic Service Amendments Filing, FINRA noted that advances in technology and its availability made filing and service permitted by the temporary amendments more efficient than under FINRA’s “original” (non-amended) rules.¹⁰ Moreover, FINRA determined that electronic service and filing is beneficial for parties, panelists and FINRA staff.¹¹ FINRA also noted that the Commission likewise amended its rules in November 2020 to require electronic filing and service of documents in its administrative proceedings.¹² For these reasons, FINRA determined that making permanent the temporary amendments would similarly improve and modernize FINRA’s

⁸ See Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (SR-FINRA-2020-015) (Notice and immediate effectiveness of filing to temporarily amend certain timing, method of service and other procedural requirements in FINRA Rules during the outbreak of COVID-19). FINRA extended the temporary amendments several times before filing to make certain of the aforementioned amendments permanent. The temporary amendments included rule changes to permit the conduct of virtual hearings (*i.e.*, FINRA Rules 9261 and 9830), which rule changes are not being included in this proposal. Rather, the Exchange is solely copying a subset of rules covered by the temporary amendments as discussed herein.

⁹ See *Id.*

¹⁰ See Electronic Service Amendments Filing, *supra* note 7, 87 FR 22267.

¹¹ See *Id.*

¹² See Amendments to the Commission’s Rules of Practice, Securities Exchange Act Release No. 90442 (November 17, 2020), 85 FR 86464 (File No. S7-18-15) (December 30, 2020) (codified at 17 CFR 201 (2020)).

operations.¹³ In 2022, the Commission approved FINRA’s Electronic Service Amendments Filing, thereby making permanent the temporary amendments to FINRA’s rules regarding electronic service and filing, with some modifications.¹⁴

Proposal

To likewise improve and modernize its rules, the Exchange proposes to modify certain of the rules in Chapter 9 of the IEX Rule Book to allow for electronic service and filing of documents in disciplinary and other proceedings in conformity with the Electronic Service Amendments.¹⁵ IEX and FINRA are parties to a regulatory service agreement pursuant to which FINRA provides various regulatory services to and on behalf of IEX (“RSA”).¹⁶ Among the services that FINRA provides are disciplinary and dispute resolution services involving IEX Members¹⁷, including adjudicating matters on IEX’s behalf through FINRA’s OHO.

Consistent with the Electronic Service Amendments, the Exchange proposes to amend certain of its disciplinary rules related to filing, service and other procedural requirements and appeals. The proposed rule change includes provisions to allow, and in some instances require, FINRA, acting on behalf of IEX, to serve certain documents on

¹³ See Electronic Service Amendments Filing, supra note 7, 87 FR 22266-67.

¹⁴ See Securities Exchange Act Release Nos. 95147 (June 23, 2022), 87 FR 38803 (June 29, 2022) (SR-FINRA-2022-009) (order approving change to certain FINRA rules to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals) (“Electronic Service Amendments Approval Order”). The Electronic Service Amendments Approval Order related to FINRA Rules 1012, 1015, 6490, 9132, 9133, 9135, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9559 and 9630 (collectively, “the Electronic Service Amendments”).

¹⁵ Consistent with the Electronic Service Amendments Approval Order, the Exchange is not proposing to permit electronic service of an initial complaint on a respondent due to heightened fair process concerns. As is the case today, the only permissible methods of serving the initial complaint are by hand, mail or courier. See IEX Rule 9.131(b) (requiring that service be pursuant to IEX Rule 9.134).

¹⁶ See IEX Rule 9.001.

¹⁷ See IEX Rule 1.160(s).

parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator.¹⁸ In addition, to support the transition to email service and filing, the Exchange proposes to require parties in OHO proceedings to file and serve all parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.

The proposed rule change would permit service of documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending. The Exchange intends to elect email service whenever possible. If FINRA, acting on behalf of IEX, has knowledge that the address used for service is not current or not functional (i.e., FINRA receives a bounce back or other message indicating that there was a failure to deliver the email), FINRA will use other permissible methods of service until it can verify the party's email address.¹⁹ The Exchange notes that, in most cases, FINRA and the relevant party, or their counsel, will have already engaged in communications prior to the service of documents or other information. Accordingly, in most cases, FINRA will already have information regarding the relevant party, or their counsel's, preferred method of service.

FINRA Rule Series 9000 contains procedural requirements that apply to FINRA's own disciplinary and adjudicatory processes. Chapter 9 (Code of Procedure) of IEX's

¹⁸ To the extent that a party lacks the ability to use or access technology needed to file, serve or accept service by email, FINRA, as adjudicator, may order an alternative method of service upon a showing of good cause. See Electronic Service Amendments Filing, supra note 7, 87 FR 22265.

¹⁹ As indicated in the proposed rule text, the Exchange will consider service by email complete upon sending of the relevant document or other information. This is consistent with service by mail under the current rules.

Rule Book contains filing, service and other procedural requirements that intentionally track the requirements in FINRA's Rule Series 9000 in order to facilitate FINRA acting on IEX's behalf when called upon to do so under the RSA. Due to the enactment of the Electronic Service Amendments, IEX's Chapter 9 rules are currently inconsistent with some of the rules in FINRA Rule Series 9000, which now allows, and in some instances requires, FINRA to serve certain documents on parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator. IEX is therefore proposing conforming changes to its rules to align them with the Electronic Service Amendments.

The proposed rule changes would permit IEX (and by extension FINRA, when acting on behalf of IEX) to serve documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending. The proposed amendments also contain provisions to ensure that parties who lack the ability to use or access email can request relief from the Adjudicator to use an alternative method of service upon a showing of good cause.²⁰

Chapter 9 of IEX's Rule Book, among other things, sets forth the procedure for IEX proceedings for disciplining a member, associated person or formerly associated person. IEX Rule Series 9.130 is of general applicability to all proceedings set forth in Chapter 9, unless a rule specifically provides otherwise. IEX Rules 9.132(b)²¹,

²⁰ See supra note 18

²¹ See IEX Rule 9.132(b) (Service of Orders, Notices, and Decisions by Adjudicator; How Served).

9.133(b)²², and 9.146(l)²³ provide that the documents and other information governed by those rules be served pursuant to IEX Rule 9.134, which permits service on the parties using the following methods: (1) personal service, (2) mail, or (3) courier.²⁴ IEX Rule 9.134 does not permit service by email. The proposed rule change would amend IEX Rule 9.132(b) to allow IEX (or FINRA acting on behalf of IEX) to serve the relevant documents or information by email, and amend IEX Rules 9.133(b) and 9.146(l) to require parties to serve documents by email, unless an alternative method of service is ordered by the Adjudicator.

The proposed rule changes would also amend IEX Rule 9.135 to add paragraph (d), which would require parties in OHO proceedings to file and serve the parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.²⁵ As noted above, this will ensure that all parties have accurate electronic contact information for all other parties.

IEX Rule Series 9.300 sets forth the procedures for review of disciplinary proceedings by the IEX Board²⁶ and for applications for SEC review. IEX Rules 9.321, 9.341(c), 9.349(c), and 9.351(e) require IEX to serve documents in connection with those proceedings. IEX proposes to amend IEX Rules 9.321, 9.341(c), 9.349(c), and 9.351(e) to allow for email as a method of service.²⁷

²² See IEX Rule 9.133(b) (Service of Papers Other Than Complaints, Orders, Notices or Decisions; How Served).

²³ See IEX Rule 9.146(l) (Motions; General).

²⁴ See IEX Rule 9.134 (Methods of, Procedures for Service).

²⁵ See proposed IEX Rule 9.135 (Filing of Papers with Adjudicator; Procedure)

²⁶ See IEX Rule 1.160(e).

²⁷ See proposed IEX Rules 9.321 (Transmission of Record); 9.341(c) (Oral Argument; Notice Regarding Oral Argument); 9.349(c) (IEX Appeals Committee Formal Consideration; Decision;

IEX Rule Series 9.520 sets forth the procedures for eligibility proceedings and review of those proceedings by the IEX Board. IEX Rules 9.522(a)(4)²⁸, 9.524(a)(3)(A) and (B)²⁹, 9.524(b)(3)³⁰, and 9.525(e)³¹ require IEX to serve documents in connection with those proceedings, but do not allow for email as a method of service. The proposed rule change would amend those rules to allow for email as a method of service.³² Further, under the proposed change to IEX Rule 9.524(a)(3)(A) and (B), the disqualified member or sponsoring member would be required to serve documents and the exhibit and witness lists by email unless an alternative method of service is ordered by the Adjudicator.³³ Additionally, IEX proposes to add new paragraph (d) to IEX Rule 9.524, which states that service by email shall be deemed complete upon sending the documents or decision.³⁴

IEX Rule Series 9.550 sets forth the procedures for expedited proceedings³⁵ and the ability of the IEX Board to call for review a proposed decision prepared under IEX Rule Series 9.550. IEX Rule 9.559(h) (Transmission of Documents) sets forth the timing and method of service requirements for IEX (or FINRA acting on behalf of IEX) to

Issuance of Decision after Expiration of Call for Review Period); 9.351(e) (Discretionary Review by IEX Board; Issuance of Decision After Expiration of Call for Review Period).

²⁸ See IEX Rule 9.522(a)(4) (Initiation of Eligibility Proceeding; Member Regulation Consideration; Service).

²⁹ See IEX Rule 9.524(a)(3)(A) and (B) (IEX Appeals Committee Consideration; Transmission of Documents).

³⁰ See IEX Rule 9.524(b)(3) (IEX Appeals Committee Consideration; Issuance of Decision After Expiration of Call for Review Period).

³¹ See IEX Rule 9.525(e) (Discretionary Review by the IEX Board; Issuance of Decision).

³² See proposed IEX Rules 9.522(a)(4); 9.524(a)(3)(A) and (B); 9.524(b)(3); and 9.525(e).

³³ See proposed IEX Rule 9.524(a)(3)(A) and (B).

³⁴ See proposed IEX Rule 9.524(c).

³⁵ Expedited proceedings are available in a subset of disciplinary proceedings set forth in IEX Rules 9.552 through 9.559. Examples include IEX Rule 9.552 (Failure to Provide Information or Keep Information Current) and IEX Rule 9.555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

provide documents considered in commencing the expedited proceeding³⁶ and for the parties to exchange proposed exhibit and witness lists³⁷ in advance of an expedited proceeding.³⁸ IEX Rule 9.559(h) does not allow for email as a method of service. IEX proposes to amend IEX Rules 9.559(h)(1) and (2) to allow for email service, unless an alternative method of service is ordered by the Adjudicator and to remove text from Rule 9559(h)(2) that requires that documents served by email must also be served by overnight courier or personal service.³⁹ IEX Rule 9.559(q)(2)⁴⁰ requires the IEX Board to serve its decision when it issues one, and IEX Rule 9.559(q)(5)⁴¹ requires the IEX Board to serve the decision on the parties and all members with which the respondent is associated. IEX Rules 9.559(q)(2) and (5) also do not allow for email as a method of service. The proposed rule change would amend Rule 9.559(q)(2) and (5) to allow for email as a method of service. Further, IEX proposes to add new paragraph (s) to IEX Rule 9.559, which states that service by email shall be deemed complete upon sending the documents or decision.⁴² Additionally, the proposed amendment also makes a non-substantive change to correct a typographical error in the rule's title (adding a period to "9550").

IEX Rule Series 9.600 sets forth the procedures for Members to seek exemptive relief from a variety of IEX rules, including appealing a decision of the Chief Regulatory

³⁶ See IEX Rule 9.559(h)(1).

³⁷ See IEX Rule 9.559(h)(2).

³⁸ FINRA also amended its Rule 9559(h) to eliminate the requirements that, if the specified documents are served by facsimile or email, they must also be served by either overnight courier or personal delivery. IEX's amendment conforms IEX Rule 9.559(h)(1) and (2) to match FINRA's rule.

³⁹ See proposed IEX Rule 9.559(h)(2).

⁴⁰ See IEX Rule 9.559(q)(2).

⁴¹ See IEX Rule 9.559(q)(5).

⁴² See proposed IEX Rule 9.559(s).

Officer, made pursuant to IEX Rule 9.620. IEX Rules 9.630(e)(1) and (2)⁴³ require the IEX Board to serve its decision pursuant to IEX Rule 9.134, which does not allow for email as a method of service. The proposed rule change would amend IEX Rule 9.630(e) to allow for email as an alternative method of service.⁴⁴ Additionally, IEX proposes to add new paragraph (f) to IEX Rule 9.630, which states that service by email shall be deemed complete upon sending the documents or decision.⁴⁵

IEX believes these proposed changes will modernize its rules and make service and filing more efficient and effective because it will align IEX's service and filing rules with those of FINRA. Email technology is widely available, and use of electronic methods of service and filing is common practice in the courts and other regulatory agencies, including the Commission.⁴⁶ At the same time, the proposal provides for alternative methods of service for parties who lack the ability to use or access technology needed to send or receive documents electronically.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange 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) of the Act⁴⁷, in general, and furthers the objectives of Section 6(b)(5) of the

⁴³ See IEX Rule 9.630(e) (Appeal; Decision).

⁴⁴ See proposed IEX Rule 9.630(e)(1) and (2).

⁴⁵ See proposed IEX Rule 9.630(f).

⁴⁶ See *supra* note 12.

⁴⁷ 15 U.S.C. 78f(b).

Act⁴⁸, in particular, because it is 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.⁴⁹

IEX believes that the proposed rule change protects investors and the public interest by requiring use of broadly available technology to make service and filing processes more efficient and effective. IEX's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons.

The proposed rule change promotes efficiency in these processes by aligning IEX's rules with FINRA's rules that permit electronic service and filing in most instances. To ensure that documents are effectively sent and received, IEX (in line with FINRA's requirements) is proposing to require parties to provide and update their contact information, including their email address, during the course of a proceeding. These amendments reduce the reliance on paper documents in favor of more efficient electronic formats. IEX concurs with the Commission and FINRA in the belief that adopting rules on electronic service and filing is especially important as hybrid and remote work become more common.

IEX believes as well that the proposed rule change includes important safeguards to ensure fairness. For example, there are procedures in place for persons who lack the

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁹ 15 U.S.C. 78f(b)(5).

ability to use or access technology necessary to send or receive documents electronically. Such parties will have the ability to request relief from the Adjudicator to file or serve documents by another method.⁵⁰ As discussed in the Purpose section, based on FINRA's representations about its experience of operating under its temporary amendments, which have permitted electronic service and filing since mid-2020, IEX anticipates that requests to use non-electronic methods of service will be rare. In addition, the proposed rule change balances the interests of fairness and efficiency. Service of the initial complaint will continue to occur by hand, mail or courier, rather than by electronic means, thus ensuring there is satisfactory notice and fair process. Thus, the proposed rule change represents a significant step toward modernizing the service and filing processes in a manner that will protect investors and the public interest by promoting efficiency while preserving fair process.

Additionally, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, as discussed in the Purpose section, this proposed rule change is based on FINRA rule changes approved by the Commission in 2022.⁵¹ Therefore, IEX believes there is nothing in this proposal that is new or novel that has not been previously

⁵⁰ See supra note 18.

⁵¹ See supra note 14.

considered by the Commission.

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. To the contrary, IEX believes that the proposed rule change reduces the burden on competition because it eliminates inconsistencies between IEX's Code of Procedure (Chapter 9 of the IEX Rule Book) and FINRA's rules governing the adjudication of disputes and disciplinary proceedings. Additionally, IEX notes that the proposed rule change is not intended to address competitive issues but is designed to modernize the service and filing process in harmonization with the approved FINRA Rules.

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 designated this rule filing as non-controversial under Section 19(b)(3)(A)⁵² of the Act and Rule 19b-4(f)(6)⁵³ thereunder. 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 Act and Rule 19b-4(f)(6) thereunder.

The Exchange believes that this filing is non-controversial and eligible to become

⁵² 15 U.S.C. 78s(b)(3)(A).

⁵³ 17 CFR 240.19b-4(f)(6).

effective immediately because the proposal provides a more uniform standard for disciplinary rules across self-regulatory organizations and thereby enables the Exchange to modernize the service and filing process related to the conduct disciplinary hearings. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the proposed rule change is based on the approved FINRA Electronic Service Amendments.⁵⁴ As such the proposal does not raise any new or novel issues not previously considered by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6)⁵⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵⁶ 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. Waiver of the operative delay would allow the proposed changes, which are designed to modernize the service and filing process related to the conduct disciplinary hearings in alignment with the approved FINRA Rules, to be operative on the date of filing. For the foregoing reasons, the Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.

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

⁵⁴ See generally Electronic Service Amendments Approval Order, supra note 14.

⁵⁵ 17 CFR 240.19b-4(f)(6).

⁵⁶ 17 CFR 240.19b-4(f)(6)(iii).

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)⁵⁷ 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-2023-04 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2023-04. This file number should be included in the subject line if email 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

⁵⁷ 15 U.S.C. 78s(b)(2)(B).

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2023-04 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.⁵⁸

⁵⁸ 17 CFR 200.30-3(a)(12).

Exhibit 5 – Text of Proposed Rule Change

Proposed new language is underlined; proposed deletions are in brackets.

CHAPTER 9. CODE OF PROCEDURE

Rule Series 9.130. Service; Filing of Papers

Rule 9.132. Service of Orders, Notices, and Decisions by Adjudicator

- (a) No change.
- (b) How Served

A complaint or document initiating a proceeding shall be served pursuant to IEX Rule 9.134 or by electronic mail. Service by electronic mail shall be deemed complete upon sending the order, notice, or decision.

- (c) No change.

Rule 9.133. Service of Papers Other than Complaints, Orders, Notices, or Decisions

- (a) No Change.
- (b) How Served

[The paper shall be served pursuant to Rule 9134.]The Parties shall serve documents by electronic mail, unless an alternative method of service is ordered by the Adjudicator. Service by electronic mail shall be deemed complete upon sending of the document(s).

- (c)-(d) No Change.

Rule 9.135. Filing of Papers with Adjudicator; Procedure

- (a)-(c) No Change.
- (d) Party Contact Information

At the first occurrence of a Party filing a Complaint, Answer, or other paper, the Party must include a mailing address and electronic mail address at which notices, orders, pleadings, and other communications required to be served upon or

furnished to the Party may be sent. The Parties must serve any change of mailing address or electronic mail address during a proceeding on all other Parties and file this information with the Adjudicator.

Rule 9.146. Motions

(a)-(k) No Change.

(l) General

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with IEX Rules 9.133, [9.134,] 9.135, 9.136, and 9.137. The Parties shall serve documents by electronic mail, unless an alternative method of service is ordered by the Adjudicator. Service by electronic mail shall be deemed complete upon sending of the document(s).

Rule 9.321. Transmission of Record

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the IEX Appeals Committee may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the IEX Appeals Committee, and serve copies of the index upon all Parties. The Office of Hearing Officers may serve the index by electronic mail. Service by electronic mail shall be deemed complete upon sending of the index. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the IEX Appeals Committee is complete.

Rule 9.341. Oral Argument

(a)-(b) No Change.

(c) Notice Regarding Oral Argument

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing and may be served by electronic mail. Service by electronic mail shall be deemed complete upon sending of the notice. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the IEX Appeals Committee or Counsel to the IEX Appeals Committee may provide for a shorter notice period, except that Counsel to the IEX Appeals Committee may provide for a shorter notice period only with the consent of the Parties.

(d)-(f) No Change.

Rule 9.349. IEX Appeals Committee Formal Consideration; Decision

(a)-(b) No Change.

(c) Issuance of Decision After Expiration of Call for Review Period

The IEX Appeals Committee shall provide its proposed written decision to the Board. The Board may call the disciplinary proceeding for review pursuant to IEX Rule 9.351. If the Board does not call the disciplinary proceeding for review, the proposed written decision of the IEX Appeals Committee shall become final, and the IEX Appeals Committee shall serve its written decision on the Parties and provide a copy to each member of IEX with which a Respondent is associated. The IEX Appeals Committee may serve its written decision by electronic mail. Service by electronic mail shall be deemed complete upon sending the decision. The decision shall constitute the final disciplinary action of IEX for purposes of Rule 19d-1(c)(1) of the Act, unless the IEX Appeals Committee remands the proceeding.

Rule 9.351. Discretionary Review by IEX Board

(a)-(d) No Change.

(e) Issuance of Decision After Expiration of Call for Review Period

The Board shall issue and serve its written decision on the Parties and provide a copy to each Member of IEX with which a Respondent is associated. The Board may serve the decision on the Parties by electronic mail. Service by electronic mail shall be deemed complete upon sending the decision. The decision shall constitute the final disciplinary action of IEX for purposes of Rule 19d-1(c)(1) of the Act, unless the Board remands the proceeding.

Rule 9.522. Initiation of Eligibility Proceeding by IEX Staff; Member Regulation Consideration

(a) Initiation by FINRA

(1)-(3) No Change.

(4) Service

A notice issued under this paragraph (a) shall be served by facsimile, electronic mail, or pursuant to IEX Rules 9.131 and 9.134.

(b)-(e) No Change.

Rule 9.524 IEX Appeals Committee Consideration

(a) Hearing Panel Consideration

(1)-(2) No Change.

(3) Transmission of Documents

- (A) Upon receipt of an application, RAD shall gather all of the information necessary to process the application, including (i) RAD records for the disqualified Member, sponsoring Member, and[/or] disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified Member or sponsoring Member in support of the application. RAD will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified Member or sponsoring Member, as the case may be, the Office of the General Counsel, and IEX Regulation. Such documents shall be served on the disqualified Member or sponsoring Member, as the case may be, by electronic mail, mail, facsimile, or overnight courier as soon as practicable. IEX Regulation, or FINRA on its behalf, shall serve its recommendation and its supporting documents on the Office of General Counsel and the disqualified Member or sponsoring Member, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. Such documents shall be served by electronic mail, unless an alternative method of service is ordered by the Adjudicator. The disqualified Member or sponsoring Member, as the case may be, shall serve its documents on the Office of General Counsel and IEX Regulation within ten business days of the hearing, unless the Parties agree otherwise. Such documents shall be served by electronic mail, unless an alternative method of service is ordered by the Adjudicator. The Office of General Counsel shall forward all documents transmitted to it pursuant to this paragraph (a)(3) to the Hearing Panel.
- (B) Not less than ten business days before the hearing, IEX Regulation, or FINRA on its behalf, which shall act as a Party in the eligibility proceeding, and the disqualified Member or sponsoring Member, as the case may be, shall serve proposed exhibit and witness lists on each other and the Office of General Counsel. When acting on behalf of IEX Regulation as a Party in the eligibility proceeding, FINRA shall serve its exhibit and witness lists by electronic mail,

facsimile, or overnight courier. IEX Regulation and the disqualified member or sponsoring organization, as the case may be, shall serve its[The] exhibit and witness lists [shall be served by facsimile or overnight courier]by electronic mail, unless an alternative method of service is ordered by the Adjudicator.

(C) No Change.

(4)-(10) No Change.

(b) Decision

(1)-(2) No Change.

(3) Issuance of Decision after Expiration of Call for Review Period.

The IEX Appeals Committee shall provide its proposed written decision to the Board. The Board may call the eligibility proceeding for review pursuant to IEX Rule 9.525. If the Board does not call the eligibility proceeding for review, the proposed written decision of the IEX Appeals Committee shall become final, and the IEX Appeals Committee shall serve its written decision on the disqualified Member, sponsoring Member, and/or disqualified person, as the case may be, and IEX Regulation pursuant to IEX Rules 9.132 and 9.134, and may serve its written decision by electronic mail. The decision shall constitute final action of IEX, unless the IEX Appeals Committee remands the eligibility proceeding.

A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC ordered sanctions, an order.

(c) Service by Electronic Mail; When Service is Complete

For purposes of Rule 9.524, service by electronic mail shall be deemed complete upon sending the documents or decision.

Rule 9.525. Discretionary Review by the IEX Board

(a)-(d) No Change.

(e) Issuance of Decision

The Board shall issue and serve its written decision on the disqualified Member, sponsoring Member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to IEX Rules 9.132 and 9.134, and

may serve the decision on the disqualified party by electronic mail. Service by electronic mail shall be deemed complete upon sending the decision. The decision shall constitute the final action of IEX, unless the Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC-ordered sanctions, an order.

Rule 9.559. Hearing Procedures for Expedited Proceedings Under the Rule 9.550 Series

(a)-(g) No Change.

(h) Transmission of Documents

- (1) Not less than two business days before the hearing in an action brought under IEX Rule 9.557, not less than seven days before the hearing in an action brought under IEX Rules 9.556 and 9.558, and not less than 14 days before the hearing in an action brought under IEX Rules 9.551 through 9.555, IEX staff shall provide to the respondent who requested the hearing, by facsimile, electronic mail, [or]overnight courier, or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of IEX Rule 9.251(b)(1)(A), (B), (C), or (b)(2). A document that meets such criteria shall not constitute part of the record, but shall be retained by IEX until the date upon which IEX serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.
- (2) Not less than two business days before the hearing in an action brought under IEX Rule 9.557, not less than three days before the hearing in an action brought under IEX Rules 9.556 and 9.558, and not less than seven days before the hearing in an action brought under IEX Rules 9.551 through 9.555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by [facsimile or by overnight courier]electronic mail, unless an alternative method of service is ordered by the Adjudicator.

(i)-(p) No Change.

(q) Call for Review by the IEX Appeals Committee

- (1) No Change.
- (2) If the IEX Appeals Committee calls the proceeding for review within the prescribed time, it shall meet and conduct a review not later than 40 days after the call for review. The IEX Appeals Committee may elect to hold a hearing or decide the matter on the basis of the record made before the

Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the IEX Appeals Committee shall make its recommendation to the IEX Board. Not later than 60 days after receipt of the IEX Appeals Committee's recommendation, the IEX Board shall serve a final written decision on the parties via electronic mail, overnight courier or facsimile. The IEX Appeals Committee may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The IEX Board also may impose any other fitting sanction, pursuant to IEX Rule 8.310(a), and may impose costs, pursuant to IEX Rule 8.360. In addition, the IEX Board may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3)-(4) No Change.

(5) The IEX Board shall promptly serve the decision on the Parties and provide a copy of the decision to each IEX Member with which the respondent is associated. The IEX Board may serve and provide a copy of its decision by electronic mail.

(6) No Change.

(r) No Change.

(s) Service by Electronic Mail; When Service is Complete

For purposes of IEX Rule 9.559(h) and (q), service by electronic mail shall be deemed complete upon sending the documents or decision.

Rule 9.630. Appeal

(a)-(d) No Change.

(e) Decision.

(1) Subject to paragraph (2) below, after considering all matters on appeal, the IEX Appeals Committee shall affirm, modify, or reverse the decision issued under IEX Rule 9.620. The IEX Appeals Committee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to IEX Rules 9.132 and 9.134 or by electronic mail. The decision shall be effective upon service and shall constitute final action of Exchange.

(2) With respect to exemptive relief requested under IEX Rule 2.160(b), after considering all matters on appeal, the IEX Appeals Committee shall affirm, modify, or reverse the decision issued under IEX Rule 9.620 and shall issue a written decision setting forth its findings and conclusions and

serve the decision on the Applicant. The decision shall be served pursuant to IEX Rules 9.132 and 9.134 or by electronic mail. The decision shall be effective upon service and shall constitute final action of the Exchange.

(f) Service by Electronic Mail; When Service is Complete.

For purposes of IEX Rule 9.630(e), service by electronic mail shall be deemed complete upon sending the decision.
