

## Investors Exchange Regulatory Information Circular 2020-0007

**Date:** July 30, 2020

**To:** Members of Investors Exchange LLC

**Subject:** Adoption of Changes to Minor Rule Violation Plan Adding CAT Reporting Compliance Rules

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Investors Exchange LLC (“IEX” or “Exchange”) has adopted changes to the Exchange’s Minor Rule Violation Plan (“MRVP”) to make a Member’s violations of the Consolidated Audit Trail (“CAT”) compliance rules (“CAT Compliance Rules”)<sup>1</sup> eligible for disposition with a minor rule violation fine, when warranted.

CAT Compliance Rule violations became eligible for disposition under IEX’s MRVP as of June 23, 2020.<sup>2</sup> As outlined in a recent Regulatory Information Circular for all IEX Members, dated July 7, 2020, IEX, FINRA, and all CAT NMS Plan Participants have entered into an amended plan pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 (the “Rule 17d-2 Plan”) and Regulatory Services Agreements (“RSAs”) to coordinate regulation of the CAT Compliance Rules.<sup>3</sup>

The changes to the Exchange’s MRVP for CAT Compliance Rule violations discussed in this Regulatory Information Circular is consistent with coordinated regulation under the Rule 17d-2 Plan and the RSAs. A summary of the key changes is as follows.<sup>4</sup>

For failures to comply with the CAT Compliance Rule requirements, the Exchanges may impose a minor rule violation fine of up to \$2,500.<sup>5</sup> For more serious violations, formal disciplinary action may be sought. The following factors will help guide the Exchanges and FINRA in determining the appropriate disposition:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;

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<sup>1</sup> See IEX Rule Series 11.600 (Consolidated Audit Trail Compliance Rules).

<sup>2</sup> See Securities Exchange Act Release No. 89155 (June 25, 2020), 85 FR 39649 (July 1, 2020) (SR-IEX-2020-09).

<sup>3</sup> See, e.g., IEX Regulatory Information Circular 2020-0005, available at <https://iextrading.com/docs/circulars/regulatory/RC-2020-0005.pdf>

<sup>4</sup> The text of the revised rule is attached to this Regulatory Information Circular, and a full description of the revised rule as compared to the Exchange’s former rules, is available in the proposed rule change as filed with the Securities and Exchange Commission, available at <https://iextrading.com/docs/rule-filings/SR-IEX-2020-09.pdf>. See note 2, *supra*.

Members should familiarize themselves with the revised rule.

<sup>5</sup> See IEX Rule 9.216(b) (Procedure for Imposition of Fines for Minor Violation(s) of Rules) and IEX Rule 9.218 (List of rules under which a Member may be subject to a fine under IEX Rule 9.216(b)).

- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.<sup>6</sup>

Attachments:

IEX Rules 9.216(b) and 9.218

### **Additional Information**

Please contact IEX Regulation at [regulation@iextrading.com](mailto:regulation@iextrading.com) for additional information.

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<sup>6</sup> These factors also are used to inform dispositions for violations of OATS reporting rules. See FINRA Notice to Members 04-19 (March 2004), available at <https://www.finra.org/rules-guidance/notices/04-19>.

**Rule 9.216(b) Procedure for Violation Under Plan Pursuant to Exchange Act Rule 19d-1(c)(2)**

- (1) Notwithstanding IEX Rule 9.211, IEX or FINRA on its behalf, may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4) and in Exchange Act Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any Member or associated person with respect to any rule listed in IEX Rule 9.218. If the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the Member or associated person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the Member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the IEX Appeals Committee, the Board, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by IEX Regulation staff.
- (2) (A) If a Member or person associated with a Member submits an executed minor rule violation plan letter, by the submission such Member or person associated with a Member also waives:
  - (i) any right of such Member or person associated with a Member to claim bias or prejudice of the General Counsel, CRO, the IEX Appeals Committee, or any Member of the IEX Appeals Committee, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and
  - (ii) any right of such Member or person associated with a Member to claim that a person violated the ex parte prohibitions of IEX Rule 9.143 or the separation of functions prohibitions of IEX Rule 9.144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter.
- (B) If a minor rule violation plan letter is rejected, the Member or person associated with a Member shall be bound by the waivers made under paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.
- (3) If the Member or associated person executes the minor rule violation plan letter, it shall be submitted to the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may, on behalf of the IEX Board, accept or reject such letter.
- (4) If the letter is accepted by the Office of Disciplinary Affairs, it shall be deemed final and IEX shall report the violation to the SEC as required by the SEC pursuant to a plan approved under Exchange Act Rule 19d-1(c)(2). If the letter is rejected by the Office of Disciplinary Affairs, IEX, or FINRA on its behalf, may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the Member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under paragraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**Rule 9.218. Violations Appropriate for Disposition Under Plan Pursuant to Exchange Act Rule 19d-1(c)(2)**

- (a) Rule 2.160(p) - Continuing Education Requirements.
- (b) Rule 4.511 - General Requirements related to books and records requirements.
- (c) Rule 4.540 - Furnishing of records.
- (d) Rule 5.110 - Supervision.
- (e) Rule 8.220 - Automated submission of trading data requested.
- (f) Rule 11.151(a)(1) - Market Maker two-sided quotation requirement.
- (g) Rule 11.290 - Short sales.
- (h) Rule 11.310 - Locking or crossing quotations in NMS stocks.
- (i) Rule 11.420 - Order audit trail system requirements.
- (j) Rule Series 11.600 - Failure to comply with the Consolidated Audit Trail Compliance Rule requirements

Recommended Fine Schedule - Rule 9.218(a) - (i)

OCCURRENCE*	INDIVIDUAL	MEMBER
First time fined	\$100	\$500
Second time fined	\$300	\$1,000
Third time fined	\$500	\$2,500

For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule Series 11.600, pursuant to Rule 9.218(j), the Exchange may impose a minor rule violation fine of up to \$2,500.

\* Within a "rolling" 12-month period.