

Required fields are shown with yellow backgrounds and asterisks.

Filing by Investors' Exchange LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

| | | | | | |
|---|--------------------------|-------------------------------------|--------------------------------------|---|--------------------------|
| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Pilot <input type="checkbox"/> | | | Rule | | |
| Extension of Time Period for Commission Action * <input type="checkbox"/> | | Date Expires * <input type="text"/> | <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 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| | Section 3C(b)(2) * <input type="checkbox"/> |

| | |
|---|---|
| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
|---|---|

Description

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

Proposed rule change to conform IEX Rule 5.160 to FinCEN's final rule on customer due diligence requirements for financial institutions.

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 * Claudia | Last Name * Crowley |
| Title * Chief Regulatory Officer | |
| E-mail * claudia.crowley@iextrading.com | |
| Telephone * (646) 343-2041 | Fax <input type="text"/> |

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

| | |
|--------------------|---|
| Date 11/20/2018 | Chief Regulatory Officer |
| By Claudia Crowley | <input style="width: 100%; height: 30px;" type="text"/> |
| (Name *) | |

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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 *

Add Remove View

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 Advance Notice by Clearing Agencies *

Add Remove View

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, security-based swap submission, or advance notice 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

Add Remove View

Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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 4 - Marked Copies

Add Remove View

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

Add Remove View

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

Add Remove View

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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend IEX Rule 5.160 (Anti-Money Laundering Compliance Program) to reflect the Financial Crimes Enforcement Network’s (“FinCEN”) adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (“CDD Rule”). Specifically, the proposed amendments would conform IEX Rule 5.160 to the CDD Rule’s amendments to the minimum regulatory requirements for Member’ anti-money laundering (“AML”) compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act³ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁴

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

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 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
646-343-2041

Sophia Lee
General Counsel
Investors Exchange LLC
646-343-2040

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

a. Purpose

I. Background

The Bank Secrecy Act⁵ ("BSA"), among other things, requires financial institutions,⁶ including broker-dealers, to develop and implement AML programs that, at

⁵ 31 U.S.C. 5311 et seq.

⁶ See 31 U.S.C. 5312(a)(2) (defining "financial institution").

a minimum, meet the statutorily enumerated “four pillars.”⁷ These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- the establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.⁸

In addition to meeting the BSA’s requirements with respect to AML programs, Exchange Members⁹ must also comply with IEX Rule 5.160, which incorporates the BSA’s four pillars, as well as requiring Members’ AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

Pursuant to Rule 17d-2 under the Act,¹⁰ the Exchange and the Financial Industry Regulatory Authority, Inc. (“FINRA”) entered into an agreement to allocate regulatory responsibility for common rules (the “17d-2 Agreement”).¹¹ The 17d-2 Agreement covers common members of the Exchange and FINRA, and allocates to FINRA

⁷ 31 U.S.C. 5318(h)(1).

⁸ 31 CFR 1023.210(b).

⁹ See IEX Rule 1.160(s).

¹⁰ 17 CFR 240.17d-2

¹¹ See, Securities Exchange Act Release No. 78434 (July 28, 2016), 81 FR 51256 (August 3, 2016) (File No. 4-700).

regulatory responsibility, with respect to common members for Exchange rules and certain federal securities laws, rules and regulation that the Exchange certifies are identical or substantially similar to FINRA rules.¹² IEX Rule 5.160 is substantially similar to FINRA Rule 3310, and therefore among the common rules included in the 17d-2 Agreement.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule¹³ to clarify and strengthen customer due diligence for covered financial institutions,¹⁴ including broker-dealers. In its CDD Rule, FinCEN identifies four components of customer due diligence: (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.¹⁵ As

¹² Pursuant to the 17d-2 Agreement, the Exchange allocated to FINRA the following: (i) examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and rules of the Exchange that the Exchange certifies are identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules and regulations, or Exchange rules that the Exchange certifies as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange certifies as identical or substantially similar to FINRA rules.

¹³ FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

¹⁴ See 31 CFR 1010.230(f) (defining “covered financial institution”).

¹⁵ See CDD Rule Release at 29398.

the first component is already required to be part of a broker-dealer's AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.¹⁶ The CDD Rule also addresses the third and fourth components, which FinCEN states "are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements," by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new "fifth pillar."

On November 21, 2017, FINRA published Regulatory Notice 17-40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule.¹⁷ In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also recently amended FINRA Rule 3310 to explicitly incorporate the fifth pillar.¹⁸ This proposed rule change amends IEX Rule 5.160 to harmonize with the FINRA rule change and incorporate the fifth pillar.

II. IEX Rule 5.160 and Amendment to Minimum Requirements for

¹⁶ See 31 CFR 1010.230(d) (defining "beneficial owner") and 31 CFR 1010.230(e) (defining "legal entity customer").

¹⁷ As noted above, the Exchange allocated regulatory responsibility for IEX Rule 5.160 to FINRA pursuant the 17d-2 Agreement. Thus, FINRA's Regulatory Notice 17-40 was applicable to IEX Members.

¹⁸ See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR-FINRA-2018-016).

Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001¹⁹ amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, IEX Rule 5.160 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, IEX Rule 5.160 requires that each member firm, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by Member personnel or a qualified outside party;²⁰ (4) designate and identify to IEX an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to IEX of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of IEX Rule 5.160 and

¹⁹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

²⁰ If a Member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), then "independent testing" is required every two years. See IEX Rule 5.160(c). However, a Member should conduct more frequent testing than required if circumstances warrant. See Supplementary Material .01(a).

Members must continue to comply with its requirements.²¹ However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.²² Accordingly, IEX is proposing to amend IEX Rule 5.160 to incorporate this ongoing customer due diligence element, or "fifth pillar" required for AML programs. Thus, proposed Rule 5.160(f) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.²³ The proposed rule change simply incorporates into IEX Rule 5.160 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule to aid Members in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members'

²¹ FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to IEX Rule 5.160. See CDD Rule Release 29421, n. 85.

²² See CDD Rule Release at 29420; 31 CFR §1023.210.

²³ See id. at 29419.

AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.²⁴ To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.²⁵ Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.²⁶ The CDD Rule also does not prescribe a particular form of the customer risk profile.²⁷ Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or another means of assessing customer risk that allows firms to understand the risk posed

²⁴ See id. at 29421.

²⁵ See id. at 29422.

²⁶ See id.

²⁷ See id.

by the customer and to demonstrate that understanding.²⁸

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).²⁹ Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.³⁰

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.³¹ If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal

²⁸ See id.

²⁹ See id.

³⁰ See id.

³¹ See id. at 29402.

entity customers.³² However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.³³

b. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)³⁴ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act³⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into IEX Rule 5.160.

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. The proposed rule change simply incorporates into IEX Rule 5.160 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar

³² See id. at 29420-21. See also FINRA Regulatory Notice 17-40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

³³ See id.

³⁴ 15 U.S.C. 78f.

³⁵ 15 U.S.C. 78f(b)(5).

are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all IEX Members that have customers are required to be members of FINRA pursuant to Rule 15b9-1 under the Exchange Act,³⁶ and are therefore already subject to the requirements of the proposed rule change pursuant to FINRA Rule 3310. IEX is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such the proposal imposes no new burdens on competition.

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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act³⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.³⁸ The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the

³⁶ 17 CFR 240.15b9-1.

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4.

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.³⁹

The Exchange believes that the proposed rule change is non-controversial because it raises no novel issues. In particular, the purpose of the proposed rule change is to harmonize with and conform to a recent amendment to FINRA Rule 3310, as described in the Purpose section. Because the new rule provision by its terms only applies to Members with customers, and all Members with customers are already subject to FINRA Rule 3310, the rule change does not impose any new requirements on Members. Accordingly, the Exchange believes that this proposed rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.⁴⁰

Furthermore, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.⁴¹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

³⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁰ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (concerning 17 CFR 200 and 241).

⁴¹ 17 CFR 240.19b-4(f)(6)(iii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

The proposed rule change is based on FINRA Rule 3310 as described in the Purpose section.

9. Security-Based Swap Submissions Filed Pursuant to Section 3 C 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 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34 -); File No. SR-IEX-2018-22)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Conform IEX Rule 5.160 to FinCEN’s Final Rule on Customer Due Diligence Requirements for Financial Institutions.

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 “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) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to amend IEX Rule 5.160 (Anti-Money Laundering Compliance Program) to reflect the Financial Crimes Enforcement Network’s (“FinCEN”) adoption of a final rule on Customer Due Diligence Requirements for Financial Institutions (“CDD Rule”). Specifically, the proposed amendments would conform IEX Rule 5.160 to the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

CDD Rule's amendments to the minimum regulatory requirements for Member' anti-money laundering ("AML") compliance programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence. This ongoing customer due diligence element for AML programs includes: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement 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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷17 CFR 240.19b-4.

I. Background

The Bank Secrecy Act⁸ (“BSA”), among other things, requires financial institutions,⁹ including broker-dealers, to develop and implement AML programs that, at a minimum, meet the statutorily enumerated “four pillars.”¹⁰ These four pillars currently require broker-dealers to have written AML programs that include, at a minimum:

- the establishment and implementation of policies, procedures and internal controls reasonably designed to achieve compliance with the applicable provisions of the BSA and implementing regulations;
- independent testing for compliance by broker-dealer personnel or a qualified outside party;
- designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the AML program; and
- ongoing training for appropriate persons.¹¹

In addition to meeting the BSA’s requirements with respect to AML programs, Exchange Members¹² must also comply with IEX Rule 5.160, which incorporates the BSA’s four pillars, as well as requiring Members’ AML programs to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions.

⁸ 31 U.S.C. 5311 et seq.

⁹ See 31 U.S.C. 5312(a)(2) (defining “financial institution”).

¹⁰ 31 U.S.C. 5318(h)(1).

¹¹ 31 CFR 1023.210(b).

¹² See IEX Rule 1.160(s).

Pursuant to Rule 17d-2 under the Act,¹³ the Exchange and the Financial Industry Regulatory Authority, Inc. (“FINRA”) entered into an agreement to allocate regulatory responsibility for common rules (the “17d-2 Agreement”).¹⁴ The 17d-2 Agreement covers common members of the Exchange and FINRA, and allocates to FINRA regulatory responsibility, with respect to common members for Exchange rules and certain federal securities laws, rules and regulation that the Exchange certifies are identical or substantially similar to FINRA rules.¹⁵ IEX Rule 5.160 is substantially similar to FINRA Rule 3310, and therefore among the common rules included in the 17d-2 Agreement.

On May 11, 2016, FinCEN, the bureau of the Department of the Treasury responsible for administering the BSA and its implementing regulations, issued the CDD Rule¹⁶ to clarify and strengthen customer due diligence for covered financial institutions,¹⁷ including broker-dealers. In its CDD Rule, FinCEN identifies four

¹³ 17 CFR 240.17d-2

¹⁴ See, Securities Exchange Act Release No. 78434 (July 28, 2016), 81 FR 51256 (August 3, 2016) (File No. 4-700).

¹⁵ Pursuant to the 17d-2 Agreement, the Exchange allocated to FINRA the following: (i) examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and rules of the Exchange that the Exchange certifies are identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules and regulations, or Exchange rules that the Exchange certifies as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange certifies as identical or substantially similar to FINRA rules.

¹⁶ FinCEN Customer Due Diligence Requirements for Financial Institutions; CDD Rule, 81 FR 29397 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (September 28, 2017) (making technical correcting amendments to the final CDD Rule published on May 11, 2016). FinCEN is authorized to impose AML program requirements on financial institutions and to require financial institutions to maintain procedures to ensure compliance with the BSA and associated regulations. 31 U.S.C. 5318(h)(2) and (a)(2). The CDD Rule is the result of the rulemaking process FinCEN initiated in March 2012. See 77 FR 13046 (March 5, 2012) (Advance Notice of Proposed Rulemaking) and 79 FR 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking).

¹⁷ See 31 CFR 1010.230(f) (defining “covered financial institution”).

components of customer due diligence: (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.¹⁸ As the first component is already required to be part of a broker-dealer's AML program under the BSA, the CDD Rule focuses on the other three components.

Specifically, the CDD Rule focuses particularly on the second component by adding a new requirement that covered financial institutions identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened, subject to certain exclusions and exemptions.¹⁹ The CDD Rule also addresses the third and fourth components, which FinCEN states "are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements," by amending the existing AML program rules for covered financial institutions to explicitly require these components to be included in AML programs as a new "fifth pillar."

On November 21, 2017, FINRA published Regulatory Notice 17-40 to provide guidance to member firms regarding their obligations under FINRA Rule 3310 in light of the adoption of FinCEN's CDD Rule.²⁰ In addition, the Notice summarized the CDD Rule's impact on member firms, including the addition of the new fifth pillar required for member firms' AML programs. FINRA also recently amended FINRA Rule 3310 to

¹⁸ See CDD Rule Release at 29398.

¹⁹ See 31 CFR 1010.230(d) (defining "beneficial owner") and 31 CFR 1010.230(e) (defining "legal entity customer").

²⁰ As noted above, the Exchange allocated regulatory responsibility for IEX Rule 5.160 to FINRA pursuant the 17d-2 Agreement. Thus, FINRA's Regulatory Notice 17-40 was applicable to IEX Members.

explicitly incorporate the fifth pillar.²¹ This proposed rule change amends IEX Rule 5.160 to harmonize with the FINRA rule change and incorporate the fifth pillar.

II. IEX Rule 5.160 and Amendment to Minimum Requirements for Members' AML Programs

Section 352 of the USA PATRIOT Act of 2001²² amended the BSA to require broker-dealers to develop and implement AML programs that include the four pillars mentioned above. Consistent with Section 352 of the PATRIOT Act, and incorporating the four pillars, IEX Rule 5.160 requires each Member to develop and implement a written AML program reasonably designed to achieve and monitor the Member's compliance with the BSA and implementing regulations. Among other requirements, IEX Rule 5.160 requires that each member firm, at a minimum: (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations; (3) provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by Member personnel or a qualified outside party;²³ (4) designate and identify to IEX an individual or individuals (i.e., AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML program and provide prompt notification to

²¹ See Securities Exchange Act Release No. 83154 (May 2, 2018), 83 FR 20906 (May 8, 2018) (File No. SR-FINRA-2018-016).

²² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

²³ If a Member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), then "independent testing" is required every two years. See IEX Rule 5.160(c). However, a Member should conduct more frequent testing than required if circumstances warrant. See Supplementary Material .01(a).

IEX of any changes to the designation; and (5) provide ongoing training for appropriate persons.

FinCEN's CDD Rule does not change the requirements of IEX Rule 5.160 and Members must continue to comply with its requirements.²⁴ However, FinCEN's CDD Rule amends the minimum regulatory requirements for broker-dealers' AML programs by explicitly requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.²⁵ Accordingly, IEX is proposing to amend IEX Rule 5.160 to incorporate this ongoing customer due diligence element, or "fifth pillar" required for AML programs. Thus, proposed Rule 5.160(f) would provide that the AML programs required by this Rule shall, at a minimum include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to: (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

As stated in the CDD Rule, these provisions are not new and merely codify existing expectations for Members to adequately identify and report suspicious transactions as required under the BSA and encapsulate practices generally already undertaken by securities firms to know and understand their customers.²⁶ The proposed rule change simply incorporates into IEX Rule 5.160 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule to aid Members

²⁴ FinCEN notes that broker-dealers must continue to comply with FINRA Rules, notwithstanding differences between the CDD Rule and FINRA Rule 3310, which is substantially identical to IEX Rule 5.160. See CDD Rule Release 29421, n. 85.

²⁵ See CDD Rule Release at 29420; 31 CFR §1023.210.

²⁶ See id. at 29419.

in complying with the CDD Rule's requirements. However, to the extent that these elements, which are briefly summarized below, are not already included in Members' AML programs, the CDD Rule requires Members to update their AML programs to explicitly incorporate them.

III. Summary of Fifth Pillar's Requirements

Understanding the Nature and Purpose of Customer Relationships

FinCEN states in the CDD Rule that firms must necessarily have an understanding of the nature and purpose of the customer relationship in order to determine whether a transaction is potentially suspicious and, in turn, to fulfill their SAR obligations.²⁷ To that end, the CDD Rule requires that firms understand the nature and purpose of the customer relationship in order to develop a customer risk profile. The customer risk profile refers to information gathered about a customer to form the baseline against which customer activity is assessed for suspicious transaction reporting.²⁸ Information relevant to understanding the nature and purpose of the customer relationship may be self-evident and, depending on the facts and circumstances, may include such information as the type of customer, account or service offered, and the customer's income, net worth, domicile, or principal occupation or business, as well as, in the case of existing customers, the customer's history of activity.²⁹ The CDD Rule also does not prescribe a particular form of the customer risk profile.³⁰ Instead, the CDD Rule states that depending on the firm and the nature of its business, a customer risk profile may consist of individualized risk scoring, placement of customers into risk categories or

²⁷ See id. at 29421.

²⁸ See id. at 29422.

²⁹ See id.

³⁰ See id.

another means of assessing customer risk that allows firms to understand the risk posed by the customer and to demonstrate that understanding.³¹

The CDD Rule also addresses the interplay of understanding the nature and purpose of customer relationships with the ongoing monitoring obligation discussed below. The CDD Rule explains that firms are not necessarily required or expected to integrate customer information or the customer risk profile into existing transaction monitoring systems (for example, to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis).³² Rather, FinCEN expects firms to use the customer information and customer risk profile as appropriate during the course of complying with their obligations under the BSA in order to determine whether a particular flagged transaction is suspicious.³³

Conduct Ongoing Monitoring

As with the requirement to understand the nature and purpose of the customer relationship, the requirement to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, merely adopts existing supervisory and regulatory expectations as explicit minimum standards of customer due diligence required for firms' AML programs.³⁴ If, in the course of its normal monitoring for suspicious activity, the Member detects information that is relevant to assessing the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal

³¹ See id.

³² See id.

³³ See id.

³⁴ See id. at 29402.

entity customers.³⁵ However, there is no expectation that the Member update customer information, including beneficial ownership information, on an ongoing or continuous basis.³⁶

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)³⁷ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act³⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change will aid Members in complying with the CDD Rule's requirement that Members' AML programs include risk-based procedures for conducting ongoing customer due diligence by also incorporating the requirement into IEX Rule 5.160.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply incorporates into IEX Rule 5.160 the ongoing customer due diligence element, or "fifth pillar," required for AML programs by the CDD Rule. Regardless of the proposed rule change, to the extent that the elements of the fifth pillar are not already included in Members' AML programs, the CDD Rule requires Members

³⁵ See id. at 29420-21. See also FINRA Regulatory Notice 17-40 (discussing identifying and verifying the identity of beneficial owners of legal entity customers).

³⁶ See id.

³⁷ 15 U.S.C. 78f.

³⁸ 15 U.S.C. 78f(b)(5).

to update their AML programs to explicitly incorporate them. In addition, as stated in the CDD Rule, these elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. Further, all IEX Members that have customers are required to be members of FINRA pursuant to Rule 15b9-1 under the Exchange Act,³⁹ and are therefore already subject to the requirements of the proposed rule change pursuant to FINRA Rule 3310. IEX is not imposing any additional direct or indirect burdens on member firms or their customers through this proposal, and as such the proposal imposes no new burdens on competition.

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)⁴⁰ of the Act and Rule 19b-4(f)(6)⁴¹ 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.

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

³⁹ 17 CFR 240.15b9-1.

⁴⁰ 15 U.S.C. 78s(b)(3)(A).

⁴¹ 17 CFR 240.19b-4(f)(6).

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)⁴² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2018-22 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2018-22. 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 amendments, all written statements with respect to the proposed rule change that are filed

⁴² 15 U.S.C. 78s(b)(2)(B).

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-2018-22 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.⁴³

⁴³ 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 5. SUPERVISION

Rule 5.160. Anti-Money Laundering Compliance Program

Each Member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the Member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each Member's anti-money laundering program must be approved, in writing, by a Member of senior management. The anti-money laundering programs required by this IEX Rule 5.160 shall, at a minimum:

- (a) – (c) No change.
- (d) Designate and identify to IEX (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program (such individual or individuals must be an associated person of the Member) and provide prompt notification to IEX regarding any change in such designation(s); [and]
- (e) Provide ongoing training for appropriate personnel;[.] and
- (f) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:
 - (i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
 - (ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of paragraph (f)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230(e)).
