distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed–end funds. Applicants further represent that each Fund will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs as if the Fund were an open-end investment company.

*Asset-Based Distribution and/or Service Fees*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Funds to impose asset-based distribution and/or service fees. Applicants represent that the Funds will comply with rules 12b–1 and 17d–3 as if those rules applied to closed–end investment companies.

3. For the reasons stated above, applicants submit that the exemptions requested are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

**Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed–end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed–end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–26668 Filed 12–7–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Commission will host the SEC Government-Business Forum on Small Business Capital Formation on Wednesday, December 12, 2018, beginning at 9:00 a.m. Eastern Time.

**PLACE:** The forum will be held at the Fawcett Center on the campus of The Ohio State University, 2400 Olentangy River Road, Columbus, Ohio 43210.

**STATUS:** This meeting will be open to the public. The meeting will be webcast on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:** The forum will include remarks by SEC Commissioners and two morning panel discussions that Commissioners will attend. The panel discussions will explore how capital formation options are working for small businesses, such as those in the Midwest, and capital formation and diversity. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: December 4, 2018.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–26738 Filed 12–6–18; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–84714; 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

December 3, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 20, 2018, the Investors Exchange LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 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

[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 CRF 240.19b–4.

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 Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[7] The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

I. Background

The Bank Secrecy Act[8] (''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 Members[12] 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,[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 Rule[16] to clarify and strengthen customer due diligence for covered financial institutions,[17] 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.[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 explicitly incorporate the fifth pillar.[21] This proposed rule change amends IEX Rule 5.160 to harmonize

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[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).

[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'').

[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.

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

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 2001 [22] 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 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 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 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

[22] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 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).

[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.

[27] *See id.* at 29421.

[28] *See id.* at 29422.

[29] See id.

[30] See id.

[31] See id.

[32] See id.

[33] See id.

[34] *See id.* at 29402.

the customer's risk profile, the Member must update the customer information, including the information regarding the beneficial owners of legal 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 Act[38] 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 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 19–4(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 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 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 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 December 31, 2018. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–26593 Filed 12–7–18; 8:45 am]

**BILLING CODE 8011–01–P**

[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).

[39] 17 CFR 240.15b9–1.

[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f)(6).

[42] 15 U.S.C. 78s(b)(2)(B).

[43] 17 CFR 200.30–3(a)(12).