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

File No. * SR 2024 - * 16

Amendment No. (req. for Amendments *)

Filing by Investors' Exchange LLC

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

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

<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 Adopt Supplementary Material .16 to IEX Rule 5.110 (Supervision), so that IEX Members who Participate in the Recently Approved FINRA Pilot Program on Remote Inspections Will Also Satisfy the Internal Inspection Requirements Found in IEX's Rules

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

Date 09/04/2024

(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: 2024.09.03 17:36:16 -04'00'

Required fields are shown with yellow backgrounds and astericks.

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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FINRA remote inspections 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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FINRA remote inspections Ex 1- SEC

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

Add Remove View

FINRA remote inspections Ex 5 - SEC

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 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 adopt Supplementary Material .16 to IEX Rule 5.110 (Supervision), so that IEX Members³ who participate in the recently-approved FINRA pilot program on remote inspections (the “Remote Inspections Pilot Program”)⁴ will also satisfy the internal inspection requirements found in IEX’s rules.

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

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See IEX Rule 1.160(s).

⁴ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (“Remote Inspections Pilot Program Proposal”); Securities Exchange Act Release No. 98982 (November 17, 2023), 88 FR 82464 (November 24, 2023) (“Remote Inspections Pilot Program Approval Order”) (SR-FINRA-2023-007).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4.

(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

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

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

a. Purpose

IEX proposes to adopt Supplementary Material .16 to IEX Rule 5.110, which would provide that any IEX Member that participates in the FINRA Remote Inspections Pilot Program⁷, thereby satisfying the internal inspections requirements in FINRA Rule 3110(c), would also satisfy the equivalent internal inspections requirements in IEX Rule 5.110(c). This proposed rule change would supplant Supplementary Material .15 to IEX Rule 5.110, which allowed Members to fulfill any calendar year 2024 internal inspection obligations set forth in IEX Rule 5.110(c) by conducting remote inspections of the

⁷ See FINRA Rule 3110.18.

applicable offices of supervisory jurisdiction (“OSJs”)⁸, branch offices (both supervisory and non-supervisory)⁹, and non-branch locations.¹⁰ This temporary relief, which was analogous to relief that FINRA provided for, automatically sunset on June 30, 2024.¹¹ As described below, adding Proposed Supplementary Material .16 to IEX Rule 5.110 would harmonize IEX’s internal inspections obligations for its Members with FINRA’s comparable obligations for its members, thereby avoiding confusion to IEX Members with respect to the applicability of participation in the FINRA Remote Inspections Pilot Program with respect to compliance with IEX Rule 5.110.¹² Additionally, because Proposed Supplementary Material .16 to IEX Rule 5.110 incorporates by reference FINRA Rule 3110.18, this rule change enables IEX Rule 5.110 to continue to be incorporated into the agreement between IEX and FINRA to allocate regulatory responsibility for common rules (the “17d-2 Agreement”).¹³

Standards for Supervision of Remote Offices

The responsibility of firms to supervise their associated persons is a critical component of broker-dealer regulation.¹⁴ Members must supervise all of their associated

⁸ See IEX Rule 5.110(f)(1).

⁹ See IEX Rule 5.110(f)(2)(A).

¹⁰ See Supplementary Material .15 to IEX Rule 5.110 (“Temporary Relief to Allow Remote Inspections for Calendar Years 2021, 2022, 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program or June 30, 2024”).

¹¹ See Id. The equivalent temporary relief offered by FINRA also sunset on June 30, 2024. See FINRA Rule 3110.17

¹² IEX notes that all IEX Members are currently FINRA members, or in the process of becoming FINRA members.

¹³ See Securities Exchange Act Release No. 93324 (October 14, 2021), 86 FR 58110 (October 20, 2021) (File No. 4-700). The 17d-2 Agreement includes a certification by IEX that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable.

¹⁴ See generally SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office

persons, regardless of their location, compensation or employment arrangement, or registration status. IEX Rule 5.110, which is substantially identical to FINRA Rule 3110(c), requires any Member, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and IEX rules, and that sets forth the minimum requirements for such supervisory system.¹⁵ The internal inspection obligation under IEX Rule 5.110(c) and FINRA Rule 3110(c) is one component of such system.

IEX Rule 5.110(c) sets forth three main requirements for inspections. First, an inspection of an office or location must occur on a designated frequency. The periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place: OSJs and supervisory branch offices must be inspected at least annually¹⁶; non-supervisory branch offices must be inspected at least every three years¹⁷; and non-branch locations must be inspected on a periodic schedule, presumed to be at least every three years.¹⁸ Second, a Member must retain a written record of the date upon which each review and inspection occurred, reduce a location's inspection to a written report and keep each inspection report on file either for a

Supervision (March 19, 2004) (“SLB 17”) (SEC guidance on remote office supervision), <https://www.sec.gov/interps/legal/mrslb17.htm>; and Regulatory Notice 11-54 (November 2011) (“Notice 11-54”) (joint SEC and FINRA guidance on effective policies and procedures for broker-dealer branch inspections).

¹⁵ See IEX Rule 5.110(a).

¹⁶ See IEX Rule 5.110(c)(1)(A).

¹⁷ See IEX Rule 5.110(c)(1)(B).

¹⁸ See IEX Rule 5.110(c)(1)(C) and Supplementary Material .13 to IEX Rule 5.110 (“General Presumption of Three-Year Limit for Periodic Inspection Schedules”).

minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written.¹⁹ If applicable to the location being inspected, the inspection report must include the testing and verification of the Member's policies and procedures, including supervisory policies and procedures, in specified areas.²⁰ Third, to prevent compromising the effectiveness of inspections due to conflicts of interest, the rule requires a Member to ensure that the person conducting the inspection is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to that location.²¹ All OSJs, branch offices, and non-branch locations are subject to IEX Rule 5.110(c).

Further, Supplementary Material .12 to IEX Rule 5.110 sets out factors that constitute a reasonable review. This provision emphasizes establishing reasonable supervisory procedures and conducting reviews of locations, taking into consideration, among other things, the Member's size, organizational structure, scope of business

¹⁹ See IEX Rule 5.110(c)(2).

²⁰ See IEX Rule 5.110(c)(2)(A) (providing that the inspection report must include, without limitation, the testing and verification of the Member's policies and procedures, including supervisory policies and procedures for: (1) safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of supervisory personnel; (4) transmittals of funds from customers to third party accounts, from customer accounts to outside entities, from customer accounts to locations other than a customer's primary residence, and between customers and registered representatives, including the hand delivery of checks; and (5) changes of customer account information, including address and investment objectives changes, and validation of such changes).

²¹ IEX Rule 5.110(c)(3) provides a limited exception from this requirement if a firm determines compliance is not possible either because of the firm's size or its business model. Supplementary Material .14 to IEX Rule 5.110 (Exception to Persons Prohibited from Conducting Inspections) reflects IEX's expectation that a firm generally will rely on the exception in instances where the firm has only one office or has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager. However, these situations are non-exclusive, and a firm may still rely on the exception in other instances where it cannot comply because of its size or business model, provided the firm complies with the documentation requirements under the rule.

activities, number and location of the Member's offices, the nature and complexity of the products and services offered by the Member, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (i.e., "red flags").²² The provision further states that the procedures established and reviews conducted must provide that the quality of supervision at remote (i.e., geographically dispersed) locations is sufficient to ensure compliance with applicable securities laws and regulations and with IEX rules, and that Members must be especially diligent with respect to a non-branch location where a registered representative engages in securities activities. This provision incorporates guidance FINRA has previously issued about supervising associated persons working in geographically dispersed offices.²³

Notably, all of the above requirements about supervision and inspections of OSJs, branch offices, and non-branch locations reflected a business environment in which Members conducted in-person inspections of all of their offices.²⁴

FINRA's Recent Attempts to Change the In-Person Inspection Requirements of OSJs,

²² Such red flags may include: customer complaints; a large number of elderly customers; a concentration in highly illiquid or risky investments; an unexplained increase or change in the types of investments or trading concentration that a representative is recommending or trading; an unexpected improvement in a representative's production, lifestyle, or wealth; questionable or frequent transfers of cash or securities between customer or third party accounts, or to or from the representative; a representative that serves as a power of attorney, trustee or in a similar capacity for a customer or has discretionary control over a customer's account(s); a representative with disciplinary records; customer investments in one or a few securities or class of securities that is inconsistent with firm policies related to such investments; churning; trading that is inconsistent with customer objectives; numerous trade corrections, extensions, liquidations; or significant switching activity of mutual funds or variable products held for short time periods. See SLB 17, supra note 14.

²³ See NASD [FINRA] Notice to Members 98-38 (May 1998) and 99-45 (June 1999).

²⁴ See SLB 17 and Notice 11-54, supra note 14.

Branch Offices, and Non-Branch Locations

In the Remote Inspections Pilot Program Proposal, FINRA described its efforts during the past several years to offer its members the option of remotely conducting internal inspections of their OSJs, branch offices, and non-branch locations.²⁵ As stated therein, FINRA believed that as more recordkeeping moved from paper to electronic records, and as more meetings were conducted virtually using platforms such as Zoom and WebEx, the burden on FINRA members of conducting in-person inspections for all their remote office locations became harder to justify.²⁶

Thus, when the COVID-19 pandemic required many securities industry professionals to work from home, FINRA implemented several forms of regulatory relief to its members, including introducing FINRA Rule 3110.17, which IEX also introduced as Supplementary Material .15 to IEX Rule 5.110, to permit remote internal inspections of their OSJs, branch offices, and non-branch locations.

The pandemic accelerated the industry's adoption of a broad remote work environment and IEX recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (e.g., private residences). As part of an effort to modernize its rules to reflect evolving technologies and business models, in April 2023, FINRA filed the Remote Inspections Pilot Program Proposal with the Commission to establish a voluntary, three-year remote inspections pilot program that would allow eligible firms to

²⁵ See Remote Inspections Pilot Program Proposal, supra note 4.

²⁶ See Id.

conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.²⁷ The SEC approved the FINRA Remote Inspection Pilot Program Proposal in November 2023²⁸, and FINRA commenced the pilot program on July 1, 2024.²⁹

FINRA's Remote Inspections Pilot Program

FINRA's Remote Inspection Pilot Program builds on the terms of the temporary relief in FINRA Rule 3110.17, while requiring members to provide even more information about their remote inspections to allow FINRA to assess the overall impact and effectiveness of remote inspections.³⁰ The pilot program is designed to provide broader systemized information to supplement the information obtained through the FINRA examination process in an environment where offices and locations were closed. The information firms would be required to produce as a pilot program participant will help FINRA more accurately assess the overall impact and effectiveness of remote inspections.³¹

FINRA's Remote Inspection Pilot Program includes, among other things, the following requirements for participating firms:

- Risk Assessment. Prior to electing a remote inspection for an office or location, participating firms must develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.³²
- Written Supervisory Procedures for Remote Inspections. Participating

²⁷ See Id.

²⁸ See Remote Inspections Pilot Program Approval Order, supra note 4.

²⁹ See FINRA Regulatory Notice 24-02.

³⁰ See Remote Inspections Pilot Program Proposal, supra note 4.

³¹ See Id.

³² See FINRA Rule 3110.18(b).

firms must establish, maintain, and enforce written procedures that are reasonably designed for conducting remote inspections and reasonably designed to achieve compliance with applicable securities laws and regulations.³³

- **Effective Supervisory System.** Participating firms must have an effective supervisory system for remote inspections that will be held to the same standards of review (set forth under FINRA Rule 3110.12). Where a member's remote inspection of an office or location identifies any "red flags," the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent on-site visit on an announced or unannounced basis.³⁴
- **Documentation Requirement.** Participating firms must maintain and preserve a centralized record for each of the Pilot Years specified in the pilot program that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in FINRA Rule 3110.18(d). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.³⁵
- **Firm Level Requirements.** Participating firms must meet certain firm-level eligibility requirements to participate in the program set forth in FINRA Rule 3110.18(f)(1). For example, a firm cannot participate if it is designated as: (i) Restricted Firm under FINRA Rule 4111 or (ii) a Taping Firm under FINRA Rule 3170. Additionally, firms with suspended or new (effective less than 12 months) FINRA memberships or that have been found by the SEC or FINRA to have violated FINRA Rule 3110(c) are ineligible to participate. Participating firms must also comply with firm-level conditions to participate in the program. For example, a firm must have a recordkeeping system that keeps records current and promptly accessible, and that does not maintain physical or electronic records at the location subject to remote inspection. Additionally, participating firms must have firm-wide tools such as electronic recordkeeping systems, system security tools such as secure network connections and effective cybersecurity protocols, and tools specifically applied to each office or location based on the activities of associated persons, products offered, or

³³ See FINRA Rule 3110.18(c).

³⁴ See FINRA Rule 3110.18(d).

³⁵ See FINRA Rule 3110.18(e).

any restrictions on the activity of the office or location.³⁶

- **Location Level Requirements.** Participating firms must exclude from participating in the program any locations that do not meet the location level eligibility criteria set forth in FINRA Rule 3110.18(g)(1) (e.g., the location includes: (i) persons subject to a disciplinary action, a statutory disqualification, or a mandated heightened supervisory plan; (ii) persons engaged in proprietary trading; or (iii) the handling of customer funds or securities). Additionally, eligible locations must use the firm's electronic communication system and may not maintain any original copies of books or records at the location.³⁷
- **Data and Information Collection Requirement.** Participating firms must collect and on a quarterly basis produce to FINRA data consisting of separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. This data must include information about the number of remote inspections conducted and any significant findings. Firms shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements.³⁸
- **Election to Participate in Remote Inspections Pilot Program.** Participating firms must opt-in to the pilot program in a manner specified by FINRA.³⁹
- **Failure to Satisfy Conditions and Determination of Ineligibility.** Participating firms that fail to satisfy terms of the Remote Inspections Pilot Program will be ineligible to participate in the pilot program and return to conducting only on-site inspections.⁴⁰ FINRA may also make a determination to revoke a member's eligibility to participate if FINRA finds it to be in the public interest.⁴¹
- **Definitions of Pilot Year periods.** Includes clarifications that Pilot Year 1 is the second half of 2024, and Pilot Year 4 is the first half of 2027.⁴²

Proposal

³⁶ See FINRA Rule 3110.18(f).

³⁷ See FINRA Rule 3110.18(g).

³⁸ See FINRA Rule 3110.18(h).

³⁹ See FINRA Rule 3110.18(i).

⁴⁰ See FINRA Rule 3110.18(j).

⁴¹ See FINRA Rule 3110.18(k).

⁴² See FINRA Rule 3110.18(l).

IEX proposes to adopt Supplementary Material .16 to IEX Rule 5.110. This proposed new supplementary material reads as follows:

Members that are obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under IEX Rule 5.110 may satisfy such obligation by participating in the FINRA Remote Inspections Pilot Program, as set forth in FINRA Rule 3110.18. The FINRA Remote Inspections Pilot Program shall cover required inspections of such offices or locations for a period of three years starting on September 3, 2024 ("pilot period"), and such pilot period shall expire on July 1, 2027. If the pilot period is not extended, this Supplementary Material will automatically sunset on July 1, 2027. Members will not be able to participate in the FINRA Remote Inspections Pilot Program after such date.⁴³

As stated in proposed new Supplementary Material .16 to IEX Rule 5.110, any IEX Member that participates in the FINRA Remote Inspections Pilot Program, thereby satisfying the internal inspections requirements in FINRA Rule 3110(c), will satisfy the equivalent internal inspections requirements in IEX Rule 5.110(c).

IEX is not proposing to add the entire FINRA Remote Inspections Pilot Program to its rules, because it would be unnecessarily duplicative and burdensome for IEX Members to submit the data and information required as part of the Remote Inspections Pilot Program to both IEX and FINRA.⁴⁴ Based upon conversations with FINRA staff, IEX understands that adopting Proposed Supplementary Material .16 to IEX Rule 5.110 would update IEX Rule 5.110 so that it remains substantially similar to FINRA Rule 3110, such that they remain common rules subject to the 17d-2 Agreement.⁴⁵ As a result,

⁴³ Proposed Supplementary Material .16 to IEX Rule 5.110.

⁴⁴ Pursuant to this proposed rule change, IEX Members will be required to collect and on a quarterly basis produce to FINRA data regarding its participation in the Remote Inspections Pilot Program. See FINRA Rule 3110.18(h). But Members will not be required to produce that information directly to IEX.

⁴⁵ See supra note 13.

regulatory responsibility for IEX Rule 5.110 would continue to be allocated to FINRA.

As noted above, all IEX Members were temporarily eligible to conduct remote office inspections until June 30, 2024. This proposed rule change allows those Members who have enrolled in FINRA’s Remote Inspections Pilot Program to continue to use remote inspections as part of an effective supervisory system.⁴⁶ IEX believes this Remote Inspections Pilot Program is a reasonable alternative for firms to fulfill their IEX Rule 5.110(c) obligations while permitting FINRA to collect data as the regulatory authority in this area under the 17d-2 Agreement to assess the efficacy and long-term viability of a permanent remote office inspections program. IEX emphasizes that the inspection requirement is one aspect of a firm’s overall supervisory system, and that the inspection, whether done in accordance with the FINRA Remote Inspections Pilot Program, or on-site, would be held to the existing standards of review under Supplementary Material .12 to IEX Rule 5.110 (Standards for Reasonable Review).⁴⁷

b. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)⁴⁸ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act⁴⁹ 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

⁴⁶ IEX notes that any inspections conducted by its Members in the brief period between July 1, 2024 and the effective date of this filing will not satisfy IEX Rule 5.110(c), but believes this will not be an issue for its Members because the remote inspections process outlined in the pilot program is an ongoing process that cannot be completed in the few days between the start of the FINRA’s pilot program and the effectiveness of this rule filing.

⁴⁷ Those standards provide, in part, that based on the factors set forth under that supplementary material, Members “may need to provide for more frequent review of certain locations.”

⁴⁸ 15 U.S.C. 78f.

⁴⁹ 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange's rule proposal is intended to harmonize IEX's supervision rules, specifically with respect to the requirements for inspections of Members' branch offices and other locations, with those of FINRA, on which they are based. As discussed in the Purpose section, because Proposed Supplementary Material .16 to IEX Rule 5.110 incorporates by reference FINRA Rule 3110.18, this rule change enables IEX Rule 5.110 to continue to be incorporated into the 17d-2 Agreement, resulting in less burdensome and more efficient regulatory compliance. Specifically, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules insofar as a Member's compliance with FINRA Rule 3110.18 shall mean the Member is also in compliance with Supplementary Material .16 to IEX Rule 5.110, thus promoting the application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to the 17d-2 Agreement. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system in accordance with Section 6(b)(5) of the Act.⁵⁰

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 is not designed to address any competitive issue but rather to provide greater harmonization among IEX and FINRA rules of similar purpose, resulting

⁵⁰ 15 U.S.C. 78f(b)(5).

in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory performance on the pending 17d-2 Agreement.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change 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 Act⁵¹ and paragraph (f)(6) of Rule 19b-4 thereunder.⁵² 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 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.⁵³

The Exchange believes that this filing is non-controversial because it raises no

⁵¹ 15 U.S.C. 78s(b)(3)(A).

⁵² 17 CFR 240.19b-4.

⁵³ 17 CFR 240.19b-4(f)(6)(iii).

novel issues and is consistent with FINRA rules previously approved by or filed with the Commission. In particular, the purpose of the proposed rule change is to harmonize with and conform to FINRA rules. The Exchange believes that the proposal promotes the protection of investors as it will harmonize the Exchange's supervision rules with those of FINRA, which will simplify the oversight process conducted by FINRA pursuant to the 17d-2 Agreement. Moreover, the Exchange does not believe that the proposed rule change implicates competition at all because the proposed change aligns the Exchange's rules with those of FINRA, which will assist it in its oversight work done pursuant to the 17d-2 Agreement.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Waiving the 30-day operative delay would permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing. Since the FINRA Remote Inspections Pilot Program commenced on July 1, 2024, waiving the 30-day operative delay would provide assurances to Members who enroll in the Remote Inspections Pilot Program that they can plan the remainder of their 2024 inspection program under a harmonized rule set, with just a short window of time in which the FINRA pilot program was not part of IEX's rules.⁵⁴, while at the same time assuring that Members continue to perform their supervisory obligations. The Exchange again notes that proposed rule change does not present any new or novel issues because IEX is harmonizing its supervision rules with those of FINRA, on which they are based. Further, waiver of the operative delay will avoid any potential confusion that may

⁵⁴ See supra note 46.

otherwise occur on the part of Members as to the applicable rules governing inspections of branch offices and other locations.

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 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 3110.18, as described in the Purpose section.

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 – 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-2024-16)

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Supplementary Material .16 to IEX Rule 5.110 (Supervision), so that IEX Members who Participate in the Recently Approved FINRA Pilot Program on Remote Inspections Will Also Satisfy the Internal Inspection Requirements Found in IEX’s Rules

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 Act⁴, and Rule 19b-4 thereunder⁵, the Exchange is filing with the Commission a proposed rule change to adopt Supplementary Material .16 to IEX Rule 5.110 (Supervision), so that IEX Members⁶ who

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.

⁶ See IEX Rule 1.160(s).

participate in the recently-approved FINRA pilot program on remote inspections (the “Remote Inspections Pilot Program”)⁷ will also satisfy the internal inspection requirements found in IEX’s rules.

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

IEX proposes to adopt Supplementary Material .16 to IEX Rule 5.110, which would provide that any IEX Member that participates in the FINRA Remote Inspections Pilot Program⁸, thereby satisfying the internal inspections requirements in FINRA Rule 3110(c), would also satisfy the equivalent internal inspections requirements in IEX Rule

⁷ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (“Remote Inspections Pilot Program Proposal”); Securities Exchange Act Release No. 98982 (November 17, 2023), 88 FR 82464 (November 24, 2023) (“Remote Inspections Pilot Program Approval Order”) (SR-FINRA-2023-007).

⁸ See FINRA Rule 3110.18.

5.110(c). This proposed rule change would supplant Supplementary Material .15 to IEX Rule 5.110, which allowed Members to fulfill any calendar year 2024 internal inspection obligations set forth in IEX Rule 5.110(c) by conducting remote inspections of the applicable offices of supervisory jurisdiction (“OSJs”)⁹, branch offices (both supervisory and non-supervisory)¹⁰, and non-branch locations.¹¹ This temporary relief, which was analogous to relief that FINRA provided for, automatically sunset on June 30, 2024.¹² As described below, adding Proposed Supplementary Material .16 to IEX Rule 5.110 would harmonize IEX’s internal inspections obligations for its Members with FINRA’s comparable obligations for its members, thereby avoiding confusion to IEX Members with respect to the applicability of participation in the FINRA Remote Inspections Pilot Program with respect to compliance with IEX Rule 5.110.¹³ Additionally, because Proposed Supplementary Material .16 to IEX Rule 5.110 incorporates by reference FINRA Rule 3110.18, this rule change enables IEX Rule 5.110 to continue to be incorporated into the agreement between IEX and FINRA to allocate regulatory responsibility for common rules (the “17d-2 Agreement”).¹⁴

Standards for Supervision of Remote Offices

⁹ See IEX Rule 5.110(f)(1).

¹⁰ See IEX Rule 5.110(f)(2)(A).

¹¹ See Supplementary Material .15 to IEX Rule 5.110 (“Temporary Relief to Allow Remote Inspections for Calendar Years 2021, 2022, 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program or June 30, 2024”).

¹² See Id. The equivalent temporary relief offered by FINRA also sunset on June 30, 2024. See FINRA Rule 3110.17

¹³ IEX notes that all IEX Members are currently FINRA members, or in the process of becoming FINRA members.

¹⁴ See Securities Exchange Act Release No. 93324 (October 14, 2021), 86 FR 58110 (October 20, 2021) (File No. 4-700). The 17d-2 Agreement includes a certification by IEX that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable.

The responsibility of firms to supervise their associated persons is a critical component of broker-dealer regulation.¹⁵ Members must supervise all of their associated persons, regardless of their location, compensation or employment arrangement, or registration status. IEX Rule 5.110, which is substantially identical to FINRA Rule 3110(c), requires any Member, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and IEX rules, and that sets forth the minimum requirements for such supervisory system.¹⁶ The internal inspection obligation under IEX Rule 5.110(c) and FINRA Rule 3110(c) is one component of such system.

IEX Rule 5.110(c) sets forth three main requirements for inspections. First, an inspection of an office or location must occur on a designated frequency. The periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place: OSJs and supervisory branch offices must be inspected at least annually¹⁷; non-supervisory branch offices must be inspected at least every three years¹⁸; and non-branch locations must be inspected on a periodic schedule, presumed to be at least every three years.¹⁹ Second, a Member must retain a written

¹⁵ See generally SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (“SLB 17”) (SEC guidance on remote office supervision), <https://www.sec.gov/interps/legal/mrslb17.htm>; and Regulatory Notice 11-54 (November 2011) (“Notice 11-54”) (joint SEC and FINRA guidance on effective policies and procedures for broker-dealer branch inspections).

¹⁶ See IEX Rule 5.110(a)

¹⁷ See IEX Rule 5.110(c)(1)(A).

¹⁸ See IEX Rule 5.110(c)(1)(B).

¹⁹ See IEX Rule 5.110(c)(1)(C) and Supplementary Material .13 to IEX Rule 5.110 (“General Presumption of Three-Year Limit for Periodic Inspection Schedules”).

record of the date upon which each review and inspection occurred, reduce a location's inspection to a written report and keep each inspection report on file either for a minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written.²⁰ If applicable to the location being inspected, the inspection report must include the testing and verification of the Member's policies and procedures, including supervisory policies and procedures, in specified areas.²¹ Third, to prevent compromising the effectiveness of inspections due to conflicts of interest, the rule requires a Member to ensure that the person conducting the inspection is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to that location.²² All OSJs, branch offices, and non-branch locations are subject to IEX Rule 5.110(c).

Further, Supplementary Material .12 to IEX Rule 5.110 sets out factors that constitute a reasonable review. This provision emphasizes establishing reasonable

²⁰ See IEX Rule 5.110(c)(2).

²¹ See IEX Rule 5.110(c)(2)(A) (providing that the inspection report must include, without limitation, the testing and verification of the Member's policies and procedures, including supervisory policies and procedures for: (1) safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of supervisory personnel; (4) transmittals of funds from customers to third party accounts, from customer accounts to outside entities, from customer accounts to locations other than a customer's primary residence, and between customers and registered representatives, including the hand delivery of checks; and (5) changes of customer account information, including address and investment objectives changes, and validation of such changes).

²² IEX Rule 5.110(c)(3) provides a limited exception from this requirement if a firm determines compliance is not possible either because of the firm's size or its business model. Supplementary Material .14 to IEX Rule 5.110 (Exception to Persons Prohibited from Conducting Inspections) reflects IEX's expectation that a firm generally will rely on the exception in instances where the firm has only one office or has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager. However, these situations are non-exclusive, and a firm may still rely on the exception in other instances where it cannot comply because of its size or business model, provided the firm complies with the documentation requirements under the rule.

supervisory procedures and conducting reviews of locations, taking into consideration, among other things, the Member's size, organizational structure, scope of business activities, number and location of the Member's offices, the nature and complexity of the products and services offered by the Member, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (i.e., "red flags").²³ The provision further states that the procedures established and reviews conducted must provide that the quality of supervision at remote (i.e., geographically dispersed) locations is sufficient to ensure compliance with applicable securities laws and regulations and with IEX rules, and that Members must be especially diligent with respect to a non-branch location where a registered representative engages in securities activities. This provision incorporates guidance FINRA has previously issued about supervising associated persons working in geographically dispersed offices.²⁴

Notably, all of the above requirements about supervision and inspections of OSJs, branch offices, and non-branch locations reflected a business environment in which

²³ Such red flags may include: customer complaints; a large number of elderly customers; a concentration in highly illiquid or risky investments; an unexplained increase or change in the types of investments or trading concentration that a representative is recommending or trading; an unexpected improvement in a representative's production, lifestyle, or wealth; questionable or frequent transfers of cash or securities between customer or third party accounts, or to or from the representative; a representative that serves as a power of attorney, trustee or in a similar capacity for a customer or has discretionary control over a customer's account(s); a representative with disciplinary records; customer investments in one or a few securities or class of securities that is inconsistent with firm policies related to such investments; churning; trading that is inconsistent with customer objectives; numerous trade corrections, extensions, liquidations; or significant switching activity of mutual funds or variable products held for short time periods. See SLB 17, supra note 15.

²⁴ See NASD [FINRA] Notice to Members 98-38 (May 1998) and 99-45 (June 1999).

Members conducted in-person inspections of all of their offices.²⁵

FINRA's Recent Attempts to Change the In-Person Inspection Requirements of OSJs, Branch Offices, and Non-Branch Locations

In the Remote Inspections Pilot Program Proposal, FINRA described its efforts during the past several years to offer its members the option of remotely conducting internal inspections of their OSJs, branch offices, and non-branch locations.²⁶ As stated therein, FINRA believed that as more recordkeeping moved from paper to electronic records, and as more meetings were conducted virtually using platforms such as Zoom and WebEx, the burden on FINRA members of conducting in-person inspections for all their remote office locations became harder to justify.²⁷

Thus, when the COVID-19 pandemic required many securities industry professionals to work from home, FINRA implemented several forms of regulatory relief to its members, including introducing FINRA Rule 3110.17, which IEX also introduced as Supplementary Material .15 to IEX Rule 5.110, to permit remote internal inspections of their OSJs, branch offices, and non-branch locations.

The pandemic accelerated the industry's adoption of a broad remote work environment and IEX recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (e.g., private residences). As part of an effort to modernize its rules to reflect evolving technologies and business models, in April 2023, FINRA filed

²⁵ See SLB 17 and Notice 11-54, supra note 15.

²⁶ See Remote Inspections Pilot Program Proposal, supra note 7.

²⁷ See Id.

the Remote Inspections Pilot Program Proposal with the Commission to establish a voluntary, three-year remote inspections pilot program that would allow eligible firms to conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.²⁸ The SEC approved the FINRA Remote Inspection Pilot Program Proposal in November 2023,²⁹ and FINRA commenced the pilot program on July 1, 2024.³⁰

FINRA's Remote Inspections Pilot Program

FINRA's Remote Inspection Pilot Program builds on the terms of the temporary relief in FINRA Rule 3110.17, while requiring members to provide even more information about their remote inspections to allow FINRA to assess the overall impact and effectiveness of remote inspections.³¹ The pilot program is designed to provide broader systemized information to supplement the information obtained through the FINRA examination process in an environment where offices and locations were closed. The information firms would be required to produce as a pilot program participant will help FINRA more accurately assess the overall impact and effectiveness of remote inspections.³²

FINRA's Remote Inspection Pilot Program includes, among other things, the following requirements for participating firms:

- Risk Assessment. Prior to electing a remote inspection for an office or location, participating firms must develop a reasonable risk-based approach to using remote inspections and conduct and document a risk

²⁸ See Id.

²⁹ See Remote Inspections Pilot Program Approval Order, supra note 7.

³⁰ See FINRA Regulatory Notice 24-02.

³¹ See Remote Inspections Pilot Program Proposal, supra note 7.

³² See Id.

assessment for that office or location.³³

- **Written Supervisory Procedures for Remote Inspections.** Participating firms must establish, maintain, and enforce written procedures that are reasonably designed for conducting remote inspections and reasonably designed to achieve compliance with applicable securities laws and regulations.³⁴
- **Effective Supervisory System.** Participating firms must have an effective supervisory system for remote inspections that will be held to the same standards of review (set forth under FINRA Rule 3110.12). Where a member's remote inspection of an office or location identifies any "red flags," the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent on-site visit on an announced or unannounced basis.³⁵
- **Documentation Requirement.** Participating firms must maintain and preserve a centralized record for each of the Pilot Years specified in the pilot program that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in FINRA Rule 3110.18(d). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.³⁶
- **Firm Level Requirements.** Participating firms must meet certain firm-level eligibility requirements to participate in the program set forth in FINRA Rule 3110.18(f)(1). For example, a firm cannot participate if it is designated as: (i) Restricted Firm under FINRA Rule 4111 or (ii) a Taping Firm under FINRA Rule 3170. Additionally, firms with suspended or new (effective less than 12 months) FINRA memberships or that have been found by the SEC or FINRA to have violated FINRA Rule 3110(c) are ineligible to participate. Participating firms must also comply with firm-level conditions to participate in the program. For example, a firm must have a recordkeeping system that keeps records current and promptly accessible, and that does not maintain physical or electronic records at the

³³ See FINRA Rule 3110.18(b).

³⁴ See FINRA Rule 3110.18(c).

³⁵ See FINRA Rule 3110.18(d).

³⁶ See FINRA Rule 3110.18(e).

location subject to remote inspection. Additionally, participating firms must have firm-wide tools such as electronic recordkeeping systems, system security tools such as secure network connections and effective cybersecurity protocols, and tools specifically applied to each office or location based on the activities of associated persons, products offered, or any restrictions on the activity of the office or location.³⁷

- **Location Level Requirements.** Participating firms must exclude from participating in the program any locations that do not meet the location level eligibility criteria set forth in FINRA Rule 3110.18(g)(1) (e.g., the location includes: (i) persons subject to a disciplinary action, a statutory disqualification, or a mandated heightened supervisory plan; (ii) persons engaged in proprietary trading; or (iii) the handling of customer funds or securities). Additionally, eligible locations must use the firm's electronic communication system and may not maintain any original copies of books or records at the location.³⁸
- **Data and Information Collection Requirement.** Participating firms must collect and on a quarterly basis produce to FINRA data consisting of separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. This data must include information about the number of remote inspections conducted and any significant findings. Firms shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements.³⁹
- **Election to Participate in Remote Inspections Pilot Program.** Participating firms must opt-in to the pilot program in a manner specified by FINRA.⁴⁰
- **Failure to Satisfy Conditions and Determination of Ineligibility.** Participating firms that fail to satisfy terms of the Remote Inspections Pilot Program will be ineligible to participate in the pilot program and return to conducting only on-site inspections.⁴¹ FINRA may also make a determination to revoke a member's eligibility to participate if FINRA finds it to be in the public interest.⁴²
- **Definitions of Pilot Year periods.** Includes clarifications that Pilot Year 1

³⁷ See FINRA Rule 3110.18(f).

³⁸ See FINRA Rule 3110.18(g).

³⁹ See FINRA Rule 3110.18(h).

⁴⁰ See FINRA Rule 3110.18(i).

⁴¹ See FINRA Rule 3110.18(j).

⁴² See FINRA Rule 3110.18(k).

is the second half of 2024, and Pilot Year 4 is the first half of 2027.⁴³

Proposal

IEX proposes to adopt Supplementary Material .16 to IEX Rule 5.110. This proposed new supplementary material reads as follows:

Members that are obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under IEX Rule 5.110 may satisfy such obligation by participating in the FINRA Remote Inspections Pilot Program, as set forth in FINRA Rule 3110.18. The FINRA Remote Inspections Pilot Program shall cover required inspections of such offices or locations for a period of three years starting on September 3, 2024 ("pilot period"), and such pilot period shall expire on July 1, 2027. If the pilot period is not extended, this Supplementary Material will automatically sunset on July 1, 2027. Members will not be able to participate in the FINRA Remote Inspections Pilot Program after such date.⁴⁴

As stated in proposed new Supplementary Material .16 to IEX Rule 5.110, any IEX Member that participates in the FINRA Remote Inspections Pilot Program, thereby satisfying the internal inspections requirements in FINRA Rule 3110(c), will satisfy the equivalent internal inspections requirements in IEX Rule 5.110(c).

IEX is not proposing to add the entire FINRA Remote Inspections Pilot Program to its rules, because it would be unnecessarily duplicative and burdensome for IEX Members to submit the data and information required as part of the Remote Inspections Pilot Program to both IEX and FINRA.⁴⁵ Based upon conversations with FINRA staff, IEX understands that adopting Proposed Supplementary Material .16 to IEX Rule 5.110

⁴³ See FINRA Rule 3110.18(l).

⁴⁴ Proposed Supplementary Material .16 to IEX Rule 5.110.

⁴⁵ Pursuant to this proposed rule change, IEX Members will be required to collect and on a quarterly basis produce to FINRA data regarding its participation in the Remote Inspections Pilot Program. See FINRA Rule 3110.18(h). But Members will not be required to produce that information directly to IEX.

would update IEX Rule 5.110 so that it remains substantially similar to FINRA Rule 3110, such that they remain common rules subject to the 17d-2 Agreement.⁴⁶ As a result, regulatory responsibility for IEX Rule 5.110 would continue to be allocated to FINRA.

As noted above, all IEX Members were temporarily eligible to conduct remote office inspections until June 30, 2024. This proposed rule change allows those Members who have enrolled in FINRA's Remote Inspections Pilot Program to continue to use remote inspections as part of an effective supervisory system.⁴⁷ IEX believes this Remote Inspections Pilot Program is a reasonable alternative for firms to fulfill their IEX Rule 5.110(c) obligations while permitting FINRA to collect data as the regulatory authority in this area under the 17d-2 Agreement to assess the efficacy and long-term viability of a permanent remote office inspections program. IEX emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done in accordance with the FINRA Remote Inspections Pilot Program, or on-site, would be held to the existing standards of review under Supplementary Material .12 to IEX Rule 5.110 (Standards for Reasonable Review).⁴⁸

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)⁴⁹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the

⁴⁶ See supra note 14.

⁴⁷ IEX notes that any inspections conducted by its Members in the brief period between July 1, 2024 and the effective date of this filing will not satisfy IEX Rule 5.110(c), but believes this will not be an issue for its Members because the remote inspections process outlined in the pilot program is an ongoing process that cannot be completed in the few days between the start of the FINRA's pilot program and the effectiveness of this rule filing.

⁴⁸ Those standards provide, in part, that based on the factors set forth under that supplementary material, Members "may need to provide for more frequent review of certain locations."

⁴⁹ 15 U.S.C. 78f.

Act.⁵⁰ 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. The Exchange's rule proposal is intended to harmonize IEX's supervision rules, specifically with respect to the requirements for inspections of Members' branch offices and other locations, with those of FINRA, on which they are based. As discussed in the Purpose section, because Proposed Supplementary Material .16 to IEX Rule 5.110 incorporates by reference FINRA Rule 3110.18, this rule change enables IEX Rule 5.110 to continue to be incorporated into the 17d-2 Agreement, resulting in less burdensome and more efficient regulatory compliance. Specifically, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules insofar as a Member's compliance with FINRA Rule 3110.18 shall mean the Member is also in compliance with Supplementary Material .16 to IEX Rule 5.110, thus promoting the application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to the 17d-2 Agreement. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system in accordance with Section 6(b)(5) of the Act.⁵¹

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

⁵⁰ 15 U.S.C. 78f(b)(5).

⁵¹ 15 U.S.C. 78f(b)(5).

competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but rather to provide greater harmonization among IEX and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory performance on the pending 17d-2 Agreement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change 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.

A proposed rule change filed under Rule 19b-4(f)(6)⁵⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

⁵² 15 U.S.C. 78s(b)(3)(A).

⁵³ 17 CFR 240.19b-4(f)(6).

⁵⁴ 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),⁵⁵ 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 to permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing. Since the FINRA Remote Inspections Pilot Program commenced on July 1, 2024, waiving the 30-day operative delay would provide assurances to Members who enroll in the Remote Inspections Pilot Program that they can plan the remainder of their 2024 inspection program under a harmonized rule set, with just a short window of time in which the FINRA pilot program was not part of IEX's rules,⁵⁶ while at the same time assuring that Members continue to perform their supervisory obligations. The Exchange again notes that proposed rule change does not present any new or novel issues because IEX is harmonizing its supervision rules with those of FINRA, on which they are based. Further, waiver of the operative delay will avoid any potential confusion that may otherwise occur on the part of Members as to the applicable rules governing inspections of branch offices and other locations.

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

⁵⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁵⁶ See supra note 47.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-16 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-2024-16. This file number should be included on 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 (<https://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

⁵⁷ 15 U.S.C. 78s(b)(2)(B).

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2024-16 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Sherry R. Haywood,

Assistant Secretary.

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 5. SUPERVISION

Rule 5.110. Supervision

(a)-(f) No changes.

* * * Supplementary Material * * *

.01-.15 No changes.

.16 Remote Inspections Pilot Program

Members that are obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under IEX Rule 5.110 may satisfy such obligation by participating in the FINRA Remote Inspections Pilot Program, as set forth in FINRA Rule 3110.18. The FINRA Remote Inspections Pilot Program shall cover required inspections of such offices or locations for a period of three years starting on September 3, 2024 ("pilot period"), and such pilot period shall expire on July 1, 2027. If the pilot period is not extended, this Supplementary Material will automatically sunset on July 1, 2027. Members will not be able to participate in the FINRA Remote Inspections Pilot Program after such date.
