

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 25

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

File No. \* SR 2022 - \* 14

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 Amend Supplementary Material .15 of IEX Rule 5.110 (Supervision).

### Contact Information

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

First Name \* Nathaniel Last Name \* Kolodny

Title \* Lead Regulation Counsel

E-mail \* nathaniel.kolodny@iextrading.com

Telephone \* (646) 343-2034 Fax

### Signature

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

Date 12/23/2022

(Title \*)

By Nathaniel Kolodny

(Name \*)

Lead Regulation Counsel

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: 2022.12.23 14:48:18  
-05'00'

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 \***

Add Remove View

2023 Remote branch office inspection

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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2023 Remote branch office inspection

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 \***

Add Remove View

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

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

Add Remove View

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

2023 Remote branch office inspections

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Investors Exchange LLC (“IEX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend Supplementary Material .15 of IEX Rule 5.110 (Supervision) to extend the temporary remote inspection relief to IEX Members through the earlier of the effective date of the FINRA pilot program on remote inspections (the “FINRA Pilot Program”)<sup>3</sup>, if approved, or December 31, 2023. The proposed extension would alleviate the ongoing operational challenges resulting from the COVID-19 pandemic that many member firms may continue to face in planning for and timely conducting required on-site inspections at locations requiring inspection in calendar year 2023.

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>4</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>5</sup>

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

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

(c) Not applicable.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (File No. SR-FINRA-2022-21).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4.

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  
917-509-9001

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

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted IEX Members<sup>6</sup>, regulators, investors, and other stakeholders. In response to the pandemic, IEX adopted Supplementary Material .15 of IEX Rule 5.110 to provide Members the temporary option of satisfying their inspection obligations for offices of supervisory jurisdiction, branch offices, or non-branch locations under IEX Rule 5.110 (Supervision) remotely for calendar years 2021 and 2022, subject to specified conditions,<sup>7</sup> due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. While there are several signs

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<sup>6</sup> See IEX Rule 1.160(s).

<sup>7</sup> See Securities Exchange Act Release No. 92222 (June 22, 2021), 86 FR 34069 (June 28, 2021) (SR-IEX-2021-09) (providing remote inspection relief to Members for calendar year 2021), and Securities Exchange Act Release No. 96460 (December 7, 2022), 87 FR 76222 (December 13, 2022) (SR-IEX-2022-12) (providing remote inspection relief to Members for calendar year 2022).

that the pandemic has receded, much uncertainty still remains. The emergence of new variants, dissimilar vaccination rates throughout the U.S., and varying levels of transmissions of the virus all indicate that COVID-19 remains an active and real public health concern. Against this setting, IEX understands the complexity Members face in assessing when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (e.g., a personal residence).<sup>8</sup> Accordingly, due to the continued logistical challenges of going on-site to branch offices or locations while these public health and safety concerns related to COVID-19 persist coupled with several Members delaying their return-to-office plans, IEX believes that extending the temporary remote inspection relief to Members is warranted.

FINRA has filed with the Commission File No. SR-FINRA-2022-021, a proposed rule change to adopt a voluntary, remote inspections pilot program that is currently pending Commission review. The FINRA Pilot Program would provide for a voluntary, three-year remote inspection pilot program to allow broker-dealers to elect to fulfill their obligation under FINRA Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms. FINRA has stated that the review period for its rule filing may extend well into 2023. Given the potential length of that review period, and the pilot program's significant planning requirements and varying

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<sup>8</sup> For example, IEX understands that both the Commission and FINRA do not currently require employees to return to the office. See SEC Fiscal Year 2022 Agency Financial Report, available at <https://www.sec.gov/files/sec-2022-agency-financial-report.pdf> and <https://www.finra.org/rules-guidance/key-topics/covid-19>.

limitations applicable to specific firms and office locations, FINRA believes that firms that intend to participate in the pilot program, if approved, would need a significant number of months to prepare appropriately for the pilot program. Moreover, further FINRA guidance might be needed to guide implementation in various circumstances.

To provide regulatory certainty while the pilot program filing is pending, and to avoid overlapping provisions if it is approved, IEX is proposing to amend Supplementary Material .15 of Rule 5.110 so that the temporary relief would expire on the earlier of the effective date of the FINRA Pilot Program or December 31, 2023. In the event the FINRA Pilot Program is not approved by December 31, 2023, the proposed rule change will automatically sunset on December 31, 2023. IEX will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond December 31, 2023. In the event the FINRA Pilot Program is approved prior to December 31, 2023, IEX will file a conforming rule change with the Commission.

The proposed rule change will conform IEX's rules with those of FINRA, which has extended the same temporary remote inspection relief to all FINRA member firms.<sup>9</sup> This proposed extension would provide further clarity to Members on regulatory requirements and account for time needed for many Members to carefully assess when and how to have their employees safely return to their offices considering vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

The proposed amendment would provide that Members have the option to

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<sup>9</sup> See Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001) and Securities Exchange Act Release No. 96241 (November 4, 2022) 87 FR 67969 (November 10, 2022) (SR-FINRA-2022-030).

conduct remotely those inspections described in Supplementary Material .15 to IEX Rule 5.110 through the earlier of the effective date of the FINRA Pilot program, if approved, or December 31, 2023. IEX is not proposing to amend the other conditions of the temporary relief in Supplementary Material .15 of IEX Rule 5.110. The current conditions of Supplementary Material .15 of IEX Rule 5.110 for Members that elect to conduct remote inspections would remain unchanged: such firms must still amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also allow IEX to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on Members' overall supervisory systems in the evolving workplace.

IEX continues to believe this temporary remote inspection option is a reasonable alternative to provide to Members to fulfill their IEX Rule 5.110 obligations during the ongoing pandemic, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Members should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, Members with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules.

IEX has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become

operative for 30 days after the date of the filing, so IEX can implement the proposed rule change immediately.

b. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>10</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> 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. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. The proposed rule change would also avoid a potential lapse in the temporary relief while challenges from COVID-19 persist, provide firms regulatory continuity in meeting their inspection obligations during the remaining Commission review period of the Pilot Proposal, and allow firms time to adapt to the pilot program, if approved, and prepare for conducting on-site inspections, as applicable.

In recognition of the impact of COVID-19 on performing on-site inspections, the proposed rule change is intended to provide firms a temporary regulatory option to

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

conduct inspections of offices and locations remotely for calendar year 2023 inspections (or until the effective date of the FINRA pilot program). This proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, IEX believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

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 to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with IEX. The proposed rule change will also provide for consistent application of the Exchange's supervision rules with those of FINRA, on which they are based. Consequently, the Exchange does not believe that the proposed change implicates competition at all.

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 Act<sup>12</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup> 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.<sup>14</sup>

The Exchange believes that this filing is non-controversial because it raises no 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 a regulatory services agreement with the Exchange. 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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

oversight work done pursuant to such regulatory services 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 delay would permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing. Since the rule proposal addresses the ability to conduct remote inspections for any inspections to be conducted through the earlier of the effective date of the FINRA Pilot Program, if approved, or December 31, 2023, waiving the 30-day delay would provide assurances to Members that they can plan their 2023 inspection program under a harmonized rule set designed to address the ongoing impacts of the COVID-19 pandemic, while at the same time assuring that Members continue to perform their supervisory obligations. The Exchange 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: (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 3110.17 and the FINRA Pilot Program<sup>15</sup>, 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.

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<sup>15</sup> See supra note 3.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -     ); File No. SR-IEX-2022-14)

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Supplementary Material .15 of IEX Rule 5.110 (Supervision).

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> 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 Act,<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to amend Supplementary Material .15 of IEX Rule 5.110 (Supervision) to extend the temporary remote inspection relief to IEX Members through the earlier of the effective date of the FINRA pilot program on remote inspections (the “FINRA Pilot Program”)<sup>6</sup>, if approved,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> See Securities Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (File No. SR-FINRA-2022-21).

or December 31, 2023. The proposed extension would alleviate the ongoing operational challenges resulting from the COVID-19 pandemic that many member firms may continue to face in planning for and timely conducting required on-site inspections at locations requiring inspection in calendar year 2023.

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://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

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted IEX Members<sup>7</sup>, regulators, investors, and other stakeholders. In response to the pandemic, IEX adopted Supplementary Material .15 of IEX Rule 5.110 to provide Members the temporary option of satisfying their inspection obligations for offices of supervisory jurisdiction, branch offices, or non-branch locations under IEX Rule 5.110 (Supervision) remotely for calendar years 2021 and 2022, subject

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<sup>7</sup> See IEX Rule 1.160(s).

to specified conditions,<sup>8</sup> due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. While there are several signs that the pandemic has receded, much uncertainty still remains. The emergence of new variants, dissimilar vaccination rates throughout the U.S., and varying levels of transmissions of the virus all indicate that COVID-19 remains an active and real public health concern. Against this setting, IEX understands the complexity Members face in assessing when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (e.g., a personal residence).<sup>9</sup> Accordingly, due to the continued logistical challenges of going on-site to branch offices or locations while these public health and safety concerns related to COVID-19 persist coupled with several Members delaying their return-to-office plans, IEX believes that extending the temporary remote inspection relief to Members is warranted.

FINRA has filed with the Commission File No. SR-FINRA-2022-021, a proposed rule change to adopt a voluntary, remote inspections pilot program that is currently pending Commission review. The FINRA Pilot Program would provide for a voluntary, three-year remote inspection pilot program to allow broker-dealers to elect to fulfill their obligation under FINRA Rule 3110(c) (Internal Inspections) by conducting inspections of

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<sup>8</sup> See Securities Exchange Act Release No. 92222 (June 22, 2021), 86 FR 34069 (June 28, 2021) (SR-IEX-2021-09) (providing remote inspection relief to Members for calendar year 2021), and Securities Exchange Act Release No. 96460 (December 7, 2022), 87 FR 76222 (December 13, 2022) (SR-IEX-2022-12) (providing remote inspection relief to Members for calendar year 2022).

<sup>9</sup> For example, IEX understands that both the Commission and FINRA do not currently require employees to return to the office. See SEC Fiscal Year 2022 Agency Financial Report, available at <https://www.sec.gov/files/sec-2022-agency-financial-report.pdf> and <https://www.finra.org/rules-guidance/key-topics/covid-19>.

some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms. FINRA has stated that the review period for its rule filing may extend well into 2023. Given the potential length of that review period, and the pilot program's significant planning requirements and varying limitations applicable to specific firms and office locations, FINRA believes that firms that intend to participate in the pilot program, if approved, would need a significant number of months to prepare appropriately for the pilot program. Moreover, further FINRA guidance might be needed to guide implementation in various circumstances.

To provide regulatory certainty while the pilot program filing is pending, and to avoid overlapping provisions if it is approved, IEX is proposing to amend Supplementary Material .15 of Rule 5.110 so that the temporary relief would expire on the earlier of the effective date of the FINRA Pilot Program or December 31, 2023. In the event the FINRA Pilot Program is not approved by December 31, 2023, the proposed rule change will automatically sunset on December 31, 2023. IEX will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond December 31, 2023. In the event the FINRA Pilot Program is approved prior to December 31, 2023, IEX will file a conforming rule change with the Commission.

The proposed rule change will conform IEX's rules with those of FINRA, which has extended the same temporary remote inspection relief to all FINRA member firms.<sup>10</sup> This proposed extension would provide further clarity to Members on regulatory requirements and account for time needed for many Members to carefully assess when

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<sup>10</sup> See Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001) and Securities Exchange Act Release No. 96241 (November 4, 2022) 87 FR 67969 (November 10, 2022) (SR-FINRA-2022-030).

and how to have their employees safely return to their offices considering vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

The proposed amendment would provide that Members have the option to conduct remotely those inspections described in Supplementary Material .15 to IEX Rule 5.110 through the earlier of the effective date of the FINRA Pilot program, if approved, or December 31, 2023. IEX is not proposing to amend the other conditions of the temporary relief in Supplementary Material .15 of IEX Rule 5.110. The current conditions of Supplementary Material .15 of IEX Rule 5.110 for Members that elect to conduct remote inspections would remain unchanged: such firms must still amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also allow IEX to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on Members' overall supervisory systems in the evolving workplace.

IEX continues to believe this temporary remote inspection option is a reasonable alternative to provide to Members to fulfill their IEX Rule 5.110 obligations during the ongoing pandemic, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Members should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, Members with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately

contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules.

IEX has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so IEX can implement the proposed rule change immediately.

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>11</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> 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. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. The proposed rule change would also avoid a potential lapse in the temporary relief while challenges from COVID-19 persist, provide firms regulatory continuity in meeting their inspection obligations during the remaining Commission review period of the Pilot Proposal, and

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

allow firms time to adapt to the pilot program, if approved, and prepare for conducting on-site inspections, as applicable.

In recognition of the impact of COVID-19 on performing on-site inspections, the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely for calendar year 2023 inspections (or until the effective date of the FINRA pilot program). This proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, IEX believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

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 is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with IEX. The proposed rule change will also provide for consistent application of the Exchange's supervision rules with those of FINRA, on which they are based. Consequently, the Exchange does not believe that

the proposed change implicates competition at all.

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)<sup>13</sup> of the Act and Rule 19b-4(f)(6)<sup>14</sup> 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)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> 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 rule proposal addresses the ability to conduct remote inspections for any inspections to be conducted through the earlier of the effective date of the FINRA Pilot

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

Program, if approved, or December 31, 2023, waiving the 30-day delay would provide assurances to Members that they can plan their 2023 inspection program under a harmonized rule set designed to address the ongoing impacts of the COVID-19 pandemic, while at the same time assuring that Members continue to perform their supervisory obligations. The Exchange 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 19(b)(2)(B)<sup>17</sup> 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

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2022-14 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-IEX-2022-14. 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](http://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-2022-14 and should be

submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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<sup>18</sup> 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

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## Rule 5.110. Supervision

(a)-(f) No changes.

\* \* \* Supplementary Material \* \* \*

.01-.14 No changes.

.15 Temporary Relief to Allow Remote Inspections for Calendar Year 2021, 2022, and 2023

- (a) Use of Remote Inspections. Each Member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in the calendar years specified in this supplementary material [2021 and 2022] pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 5.110 may, subject to the requirements of this Supplementary Material .15, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. Inspections for calendar year 2021 must be completed on or before December 31, 2021, and inspections for calendar year 2022 must be completed on or before December 31, 2022. With respect to a Member's obligation to conduct an inspection of an office or location in calendar year [2022]2023, a [m]Member has the option to conduct those inspections remotely through the earlier of the effective date of the pilot program proposed in File No. SR-FINRA-2022-021, if approved, or December 31, [2022]2023. Notwithstanding this Supplementary Material .15, a Member shall remain subject to the other requirements of Rule 5.110(c).
- (b) Written Supervisory Procedures for Remote Inspections. Consistent with a Member's obligation under Rule 5.110(b)(1), a Member that elects to conduct its inspections remotely for any of the calendar years specified in this supplementary material must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable IEX rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other

- things: (1) a description of the methodology, including technologies permitted by the Member, that may be used to conduct remote inspections; and (2) the use of other risk-based systems employed generally by the Member to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable IEX rules.
- (c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the Member's overall obligation to have an effective supervisory system and therefore, the Member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the Member conducts inspections remotely. A Member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 5.110, Supplementary Material .12. Where a Member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., "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 physical, on-site visit on an announced or unannounced basis when the Member's operational difficulties associated with COVID-19 abate, nationally or locally as relevant, and the challenges a Member is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by this Supplementary Material .15 does not extend to a Member's inspection requirements beyond [calendar year]the earlier of the effective date of the pilot program proposed in File No. SR-FINRA-2022-021, if approved, or December 31, [2022]2023 and such inspections must be conducted in compliance with Rule 5.110(c).
- (d) Documentation Requirement. A Member must maintain and preserve a centralized record for [each of] the calendar years specified in this Supplementary Material, [and 2022] that separately identifies: (1) all offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the Member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Supplementary Material .15(c). 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.

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