

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-99383; File No. SR-IEX-2024-02

January 17, 2024

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Remote Inspection Relief to IEX Members to Include Calendar Year 2024 Inspection Obligations Through the Earlier of the Effective Date of the Recently Approved FINRA Pilot Program on Remote Inspections, or June 30, 2024

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 8, 2024, the Investors Exchange LLC (“IEX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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,⁴ and Rule 19b-4 thereunder,⁵ the Exchange 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 Members⁶ to include calendar year 2024 inspection obligations through the earlier of the effective date of the recently-approved FINRA pilot program on remote

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).

inspections (the “Remote Inspections Pilot Program”)⁷, or June 30, 2024.

The Exchange has designated this proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁸ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁹

The text of the proposed rule change is available at the Exchange’s website at <https://www.iexexchange.io/>, 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 extend the temporary remote inspection relief of Supplementary Material .15 to IEX Rule 5.110 to IEX Members to include calendar year 2024 inspection

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

⁹ 17 CFR 240.19b-4.

obligations through the earlier of the effective date of the Remote Inspections Pilot Program, or June 30, 2024. IEX makes this proposal to provide its Members continuity related to conducting inspections as part of satisfying the obligations of IEX Rule 5.110(c) (Internal Inspections) at offices and locations requiring inspection during the first half of calendar year 2024.¹⁰ IEX believes the proposed extension is necessary to provide firms the time to prepare for the implementation of the Remote Inspections Pilot Program. The SEC approved the Remote Inspections Pilot Program on November 17, 2023, but FINRA has not yet announced the implementation timeline.¹¹ IEX plans to make a rule filing to incorporate the Remote Inspections Pilot Program into IEX Rule 5.110 (and specify the end date of the temporary remote inspection relief of Supplementary Material .15 to IEX Rule 5.110) after FINRA provides details about the implementation plan in the Pilot Program Regulatory Notice.

The COVID-19 pandemic caused a host of operational disruptions to the securities industry and impacted IEX Members, 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, 2022, and 2023, subject to specified

¹⁰ SEC staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and FINRA Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct onsite inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices).

¹¹ In the Remote Inspections Pilot Program Proposal, FINRA stated it will announce the effective date of the program in a Regulatory Notice (“Pilot Program Regulatory Notice”). See Remote Inspections Pilot Program Proposal, 88 FR 28620, 28635.

conditions,¹² due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. Supplementary Material .15 of IEX Rule 5.110 lapsed on December 31, 2023.

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 conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.¹³

On November 17, 2023, the Commission approved the Remote Inspections Pilot Program.¹⁴ The Remote Inspections Pilot Program is designed to allow both FINRA and the firms that are planning to participate in the Remote Inspections Pilot Program additional time to develop the technology and processes that will be essential to operationalize compliance with the Remote Inspections Pilot Program's requirements. For example, firms will need to conduct an eligibility review, and conduct and document a risk assessment for each office and location that they elect to inspect remotely and implement technology to collect and report the required data

¹² 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), 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), and Securities Exchange Act Release No. 96606 (January 6, 2023), 88 FR 2140 (January 12, 2023) (SR-IEX-2022-14) (providing remote inspection relief to Members for calendar year 2023).

¹³ See supra note 7.

¹⁴ See supra note 7.

and information to FINRA. Further, FINRA guidance will be needed to guide implementation in various circumstances.¹⁵ Firms that do not elect to participate or would be excluded from participating in the Remote Inspections Pilot Program will also be impacted and would need additional time to staff, schedule, and resume on-site inspections of offices or locations¹⁶ within the context of some lingering health concerns and fluid work locations.¹⁷

In sum, as calendar year 2024 begins, the proposed extension of Supplementary Material .15 to IEX Rule 5.110 would provide firms continuity in meeting their inspection obligations and would allow FINRA time to operationalize the Remote Inspections Pilot Program. Relatedly, the proposed extension would give time for: (1) firms that are planning to participate in the Remote Inspections Pilot Program to implement the processes needed to comply with the proposed terms therein; and (2) firms that are not planning to participate or are excluded from participating in the Remote Inspections Pilot Program, to prepare to resume conducting on-site inspections of their offices and locations as part of satisfying the obligations of IEX Rule 5.110(c).

IEX is not proposing to amend the other conditions of the temporary rule. The current

¹⁵ See *supra* note 11.

¹⁶ See *supra* note 10.

¹⁷ While the World Health Organization declared an end to COVID-19 as a public health emergency, COVID-19 remains an ongoing public health problem. See WHO Director-General, Statement on the fifteenth meeting of the IHR (2005) Emergency Committee on the COVID-19 pandemic (May 5, 2023) (stating, in part, that the “[w]hile the global risk assessment remains high, there is evidence of reducing risks to human health”), [https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic) (last visited January 8, 2024); see also Benjamin J. Silk, et al., COVID-19 Surveillance After Expiration of the Public Health Emergency Declaration — United States, May 11, 2023 (stating, among other things, that “[a]lthough COVID-19 no longer poses the societal emergency that it did when it first emerged in late 2019, COVID-19 remains an ongoing public health challenge. By April 26, 2023, more than 104 million U.S. COVID-19 cases, 6 million related hospitalizations, and 1.1 million COVID-19-associated deaths were reported to CDC[.]”), 72 *MMWR Morb Mortal Wkly Rep*, 523–528 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7219e1-H.pdf> (last visited January 8, 2024). Recent data on hospitalizations from the CDC indicate that the number of hospitalizations is up 20.4% in the most recent week (as of December 24 to December 30, 2023). See Centers for Disease Control and Prevents (“CDC”), COVID Data Tracker, Data Update for the United States, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited January 8, 2024).

conditions of the supplementary material for firms that elect to conduct remote inspections would remain unchanged: such firms must 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. IEX continues to believe this temporary remote inspection option is a reasonable alternative for firms to fulfill their IEX Rule 5.110(c) obligations under the current circumstances described above. This proposed extension is designed to maintain the investor protection objectives of the inspection requirements under these circumstances. As part of those objectives, firms should consider whether, under their particular operating conditions, continued reliance on Supplementary Material .15 to IEX Rule 5.110 to conduct remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some in-person inspections would be feasible and add value to the firms' supervisory program. IEX emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done remotely under Supplementary Material .15 to IEX Rule 5.110 or in accordance with the proposed 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).¹⁸

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ in

¹⁸ 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."

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

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 FINRA prepares the implementation of its recently approved Remote Inspections Pilot Program and allow firms time to adapt to the pilot program, and prepare for conducting on-site inspections, as applicable, 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)²¹ of the Act and Rule 19b-4(f)(6)²² 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. 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.²³

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 oversight work done pursuant to such regulatory services

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

agreement.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ 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 proposed rule change would address IEX Members' ability to conduct remote inspections for any inspections to be conducted through the earlier of the effective date of the Remote Inspections Pilot Program, or June 30, 2024, waiving the 30-day operative delay would help ensure that IEX Members could plan their 2024 inspection program and conduct remote inspections under a harmonized rule set, while at the same time helping ensure that its Members continue to perform their supervisory obligations. The Exchange stated that the 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. IEX further stated that the proposed rule change would provide only temporary relief during the period in which IEX harmonizes its supervision rules with FINRA. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁶

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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)²⁷ 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-2024-02 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-2024-02. 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

²⁷ 15 U.S.C. 78s(b)(2)(B).

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 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-2024-02 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.²⁸

Sherry R. Haywood,
Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).