

Additionally, section 57(j)(1) of the Act expressly permits any director, officer or employee of a BDC to acquire warrants, options and rights to purchase voting securities of such BDC, and the securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan which meets the requirements of section 61(a)(3)(B) of the Act. Applicant submits that the issuance of Restricted Stock pursuant to the 2021 Plan poses no greater risk to stockholders than the issuances permitted by section 57(j)(1) of the Act.

#### Section 23(c)

9. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market pursuant to tenders, or under other circumstances as the Commission may permit to ensure that the purchases are made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

10. Section 23(c)(3) of the Act permits a BDC to purchase securities of which it is the issuer in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant believes that the requested relief meets the standards of section 23(c)(3).

11. Applicant submits that these purchases will be made in a manner that does not unfairly discriminate against Applicant's stockholders because all purchases of Applicant's stock will be at the closing price of the common stock on the Nasdaq Global Market (or any primary exchange on which its shares of common stock may be traded in the future) on the relevant date (*i.e.*, the public market price on the date of grant of Restricted Stock). Applicant submits that because all transactions with respect to the 2021 Plan will take place at the public market price for the Applicant's common stock, these transactions will not be significantly different than could be achieved by any stockholder selling in a market transaction. Applicant represents that

no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving Applicant's shares.

12. Applicant represents that the withholding provisions in the 2021 Plan do not raise concerns about preferential treatment of Applicant's insiders because the 2021 Plan is a bona fide compensation plan of the type that is common among corporations generally. Furthermore, the vesting schedule is determined at the time of the initial grant of the Restricted Stock. Applicant represents that all purchases may be made only as permitted by the 2021 Plan, which will be approved by the Applicant's stockholders prior to any application of the relief. Applicant believes that granting the requested relief would be consistent with the policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission under section 23(c) of the Act.

#### Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The 2021 Plan will be authorized by the Company's shareholders.

2. Each issuance of Restricted Stock to officers and employees will be approved by the required majority, as defined in section 57(o) of the Act, of the Company's directors on the basis that such grant is in the best interests of the Company and its shareholders.

3. The amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights, together with any Restricted Stock issued and outstanding pursuant to the 2021 Plan and any other compensation plans of the Company, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Company, except that if the amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights issued to the Company's directors, officers, and employees, together with any Restricted Stock issued pursuant to the 2021 Plan and any other compensation plans of the Company, would exceed 15% of the outstanding voting securities of the Company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the 2021 Plan and any other compensation plans of the Company, at the time of

issuance shall not exceed 20% of the outstanding voting securities of the Company.

4. The amount of Restricted Stock issued and outstanding will not at the time of issuance of any Restricted Stock exceed 10% of the Company's outstanding voting securities.

5. The Board will review the 2021 Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the 2021 Plan could have on the Company's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the 2021 Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the issuance of Restricted Stock under the 2021 Plan will be in the best interests of the Company's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the 2021 Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 -92222; File No. SR-IEX-2021-09]

### Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Temporary Remote Inspection Relief to IEX Members for Calendar Year 2021

June 22, 2021.

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 June 11, 2021, 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 and II below, which Items have been prepared by the self-regulatory organization. The

<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.

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 IEX Rule 5.110 (Supervision) to provide temporary remote inspection relief to IEX Members for calendar year 2021.

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 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**

In light of the operational challenges that IEX Members<sup>6</sup> are facing due to the outbreak of the coronavirus disease (COVID-19), the Exchange proposes to amend IEX Rule 5.110 (Supervision) to adopt Supplementary Material .15 (Temporary Relief to Allow Remote Inspections for Calendar Year 2021) to provide member firms the option, subject to specified requirements under the proposed supplementary material, to complete remotely their calendar year 2021 inspection obligations under IEX Rule 5.110(c) (Internal Inspections), without an on-site visit to the office or location.<sup>7</sup> The proposed rule change

would harmonize IEX Rule 5.110 with FINRA Rule 3110.17, which provides FINRA member firms with the option, subject to specified requirements under the supplementary material, to complete remotely their calendar year 2021 inspection obligations without an on-site visit to the office or location.<sup>8</sup> The proposed rule change is necessitated by the compelling health and safety concerns and the operational challenges that Members are facing due to the sustained COVID-19 pandemic.<sup>9</sup>

IEX Rule 5.110(c), Internal Inspections, requires, *inter alia*, that "(1) [e]ach Member shall conduct a review, at least annually (on a calendar year basis), of the businesses in which it engages . . . ." Subparagraph (1)(A) of the rule requires, in relevant part, that "[e]ach Member shall inspect annually (on a calendar year basis) every [Office of Supervisory Jurisdiction or "OSJ"]<sup>10</sup> and any branch office<sup>11</sup> that supervises one or more non-branch locations." Subparagraph (1)(B) of the rule requires, in relevant part, that "[e]ach Member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations . . . ." Subparagraph (1)(B) further provides the criteria that a Member must consider when establishing the frequency of inspections for such branch locations.

On March 13, 2020 the United States declared a national emergency in response to the pandemic.<sup>12</sup> Around

guidance stating, a "broker-dealer must conduct on-site inspections of each of its office locations; Office of Supervisory Jurisdictions ('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, 2020) (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).

<sup>8</sup> See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (SR-FINRA-2020-040). FINRA's rule change also permitted FINRA members to complete their 2020 remote inspections remotely, but IEX is only seeking to permit temporary remote inspections for calendar year 2021 because the applicable deadlines to complete the 2020 inspections have elapsed.

<sup>9</sup> The proposed rule change will automatically sunset on December 31, 2021. If IEX seeks to extend the duration of the temporary proposed rule beyond December 31, 2021, IEX will submit a separate rule filing to further renew the temporary relief.

<sup>10</sup> See IEX Rule 5.110(f)(1).

<sup>11</sup> See IEX Rule 5.110(f)(2).

<sup>12</sup> See Centers for Disease Control and Prevention ("CDC"), International Classification of Diseases, Tenth Revision, Clinical Modification, <https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-3-18-2020.pdf>. See also

this time, many states issued stay-at-home orders and imposed restrictions on businesses, social activities, and travel to slow the spread of COVID-19 and reduce the burden on the U.S. health care system in accordance with the recommendations of public health experts.<sup>13</sup> In response, like many employers across U.S., Members closed their offices to the public, transitioned their employees to telework arrangements to comply with stay-at-home orders, and implemented other restrictive measures in an effort to slow the spread of COVID-19 such as curtailing or eliminating non-essential business travel, and significantly limiting or canceling in-person activities.<sup>14</sup>

These pandemic-related operational changes have made it impracticable for Members to conduct on-site inspections of OSJs, branch offices, and non-branch locations because this compliance function requires employees of the Member to travel to geographically dispersed locations. Such travel not only has been restricted at times by government orders, but also puts the health and safety of employees at great risk of contracting and spreading COVID-19.<sup>15</sup> By mid-year 2020, with many restrictive measures still in place, and in some instances additional quarantine requirements imposed on interstate travel, on-site inspections of offices or locations scheduled for calendar year 2020 continued to remain in abeyance.<sup>16</sup>

WHO Director-General, Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>.

<sup>13</sup> See S.J. Lange et al., Potential Indirect Effects of the COVID-19 Pandemic on Use of Emergency Departments for Acute Life-Threatening Conditions—United States, January–May 2020, *Morbidity and Mortality Weekly Report* (June 26, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6925e2.htm>.

<sup>14</sup> See generally FINRA Regulatory Notice 20-16 (May 2020) (describing practices implemented by FINRA member firms to transition to, and supervise in, a remote work environment during the COVID-19 pandemic).

<sup>15</sup> See CDC, Travel During the COVID-19 Pandemic (stating in part, "Travel increases your chance of getting and spreading COVID-19. . . . Delay travel and stay home to protect yourself and others from COVID-19."), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid-19.html> (updated February 16, 2021).

<sup>16</sup> See, e.g., Government of the District of Columbia, Phase Two (June 22, 2020) (announcing certain businesses to reopen and activities to resume under specified conditions and stating that anyone coming into Washington, DC from states specified as high-risk is required to self-quarantine for 14 days), <https://coronavirus.dc.gov/phasetwo> (last visited March 2, 2021); New York Department of Health, Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel (November 3,

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

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

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

<sup>7</sup> SEC and Financial Industry Regulatory Authority, Inc. ("FINRA") staff 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

In recognition of the logistical challenges firms were facing at that time to satisfy their on-site inspection obligations, FINRA adopted Rule 3110.16 (Temporary Extension of Time to Complete Office Inspections), extending the time by which firms must complete their calendar year 2020 inspection obligations under FINRA Rule 3110(c) to March 31, 2021, but emphasizing that the extension of time did not relieve firms from conducting the on-site portion of the inspections of their OSJs, branch offices, and non-branch locations.<sup>17</sup> As noted above, FINRA thereafter adopted Rule 3110.17 to allow for FINRA member firms to conduct calendar year 2020 inspections and calendar year 2021 inspections remotely, without an on-site visit to the office or location.<sup>18</sup>

The acute health and safety concerns related to COVID-19 persist, with the number of confirmed cases of COVID-19 in the U.S. continuing to increase since March 13, 2020.<sup>19</sup> While Members have continued to supervise OSJs, branch offices, and non-branch locations by, among other things, implementing remote supervisory practices through novel uses of technology as well as existing methods of supervision (e.g., supervisory checklists, surveillance tools, incident trackers, email review, and trade exception reports),<sup>20</sup> Members are still experiencing logistical challenges related to conducting the on-site portion of their inspections due to continuing business and governmental restrictions and public health concerns.

Based on feedback described in FINRA's Regulatory Notice 20-16, in comment letters submitted in response to FINRA's proposed rule changes, and discussions with industry

representatives, FINRA understood that beginning in or about March 2020, many firms had suspended the on-site component of their inspections scheduled for calendar year 2020. With no certainty as to when pandemic-related health concerns and restrictions will subside, firms will have a considerable backlog of 2020 inspections. Moreover, planning on-site inspections for calendar year 2021 for OSJs, branch offices, and non-branch locations in the current environment may be impacted as well. In light of pandemic-related developments, IEX believes further sensible and tailored temporary relief is warranted for Members to meet their inspection obligations under IEX Rule 5.110(c) for calendar year 2021.

Proposed Supplementary Material .15 to IEX Rule 5.110

In order to proactively address these concerns and to align its Supervision rule with corresponding FINRA rules covered by its regulatory services agreement with FINRA, IEX is proposing to adopt Supplementary Material .15. As proposed, Supplementary Material .15 would provide Members, subject to specified requirements therein, the option to conduct remotely the inspections of their OSJs, branch offices, and non-branch locations for any inspections to be conducted in calendar year 2021, without the requirement to conduct an on-site visit to such office or location. As described further below, the proposed rule change would set forth the dates by which inspections for calendar year 2021 are due, the requirement to amend or supplement written supervisory procedures for remote inspections, the use of remote inspections as part of an effective supervisory system, and documentation requirements. The Exchange believes this temporary remote inspection option is a reasonable alternative to provide to Members to fulfill their IEX Rule 5.110(c) obligations during these pressing times, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances.

The responsibility of Members to supervise their associated persons is a critical component of broker-dealer regulation. IEX Rule 5.110(a) requires that "[e]ach Member . . . 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 . . . ." The

proposed Supplementary Material is not intended to alter this core responsibility. The advent of technology and automation in the financial industry has significantly changed the way in which Members and their associated persons conduct their business, communicate, and meet their regulatory obligations. IEX recognizes that Members generally use an array of technological tools to facilitate their supervisory practices (e.g., surveillance systems; electronic tracking programs or applications; and electronic communications, including video conferencing tools), which many firms have leveraged to create and implement remote inspection plans, on a temporary basis, in response to pandemic-related operational challenges.<sup>21</sup>

IEX believes that proposed Supplementary Material .15 to IEX Rule 5.110 would provide a sensibly tailored regulatory alternative for Members to fulfill their obligations under IEX Rule 5.110(c) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. IEX further notes that the proposed relief would be limited in duration to align with the extended date set forth under FINRA Rule 3110.16 of December 31, 2021 for calendar year 2021 inspections.<sup>22</sup>

#### A. Deadlines To Complete Calendar Year 2021 Inspections

Currently, IEX Rule 5.110(c)(1) provides that an inspection of an office or location must occur on a designated frequency, and 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 annually (on a calendar-year basis); non-supervisory branch offices, at least every three years; and non-branch locations, on a periodic schedule at least once every three years.

Proposed Supplementary Material .15(a) would provide that a Member that is obligated to complete a 2021 inspection of an OSJ, branch office or non-branch location, pursuant to the applicable periodicity set forth under

2020), available at [https://coronavirus.health.ny.gov/system/files/documents/2020/11/interim\\_guidance\\_travel\\_advisory.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/11/interim_guidance_travel_advisory.pdf) (last visited March 2, 2021); and Chicago Department of Public Health, Emergency Travel Order (issued July 2, 2020 and last updated February 23, 2021, requiring travelers from states and territories meeting certain daily test metrics to test negative for COVID-19 pre-arrival and quarantine for 10 days), <https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html>.

<sup>17</sup> See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-19). In this rule filing, FINRA stated, among other things, that FINRA would consider whether additional relief may be warranted to address any backlog of 2020 inspections that may continue to exist in light of ongoing public health and safety concerns.

<sup>18</sup> See *supra* note 8.

<sup>19</sup> See Johns Hopkins, Coronavirus Resource Center, COVID-19 Dashboard by the Center for Systems Science and Engineering at Johns Hopkins University, <https://coronavirus.jhu.edu/map.html> (last visited March 2, 2021).

<sup>20</sup> See FINRA Regulatory Notice 20-16.

<sup>21</sup> See FINRA Regulatory Notice 20-16. See generally FINRA White Paper, "Technology Based Innovations for Regulatory Compliance ("RegTech") in the Securities Industry" (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), [https://www.finra.org/sites/default/files/2018\\_RegTech\\_Report.pdf](https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf).

<sup>22</sup> See *supra* note 8.

IEX Rule 5.110(c)(1), may satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location subject to the other requirements set forth under the proposed supplementary material. In addition, the proposed Supplementary Material would expressly provide that inspections for calendar year 2021 must be completed on or before December 31, 2021. IEX believes that providing firms with the option to satisfy the inspection component of IEX Rule 5.110(c) remotely would enable firms to finish their calendar year 2021 inspections on or before December 31, 2021, particularly given the uncertainty surrounding planning inspections at this time. Further, proposed Supplementary Material .15(a) would affirm that a Member would remain subject to the other requirements of IEX Rule 5.110(c).<sup>23</sup>

#### B. Written Supervisory Procedures for Remote Inspections

IEX Rule 5.110(a) requires that Members establish and maintain a supervisory system that is tailored specifically to the member firm's business and addresses the activities of all its associated persons. The Rule requires that a Member's supervisory system shall include a number of elements, including "[t]he establishment and maintenance of written procedures required by this IEX Rule 5.110 . . . ." Under IEX Rule 5.110(b) (Written Procedures) a Member must establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules.

<sup>23</sup> In addition to requiring firms to conduct inspections of their offices and locations on a designated frequency, IEX Rule 5.110(c) generally requires a member to 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 minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written. If applicable to the location being inspected, the inspection report must include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures, in specified areas. See IEX Rule 5.110(c)(2). In addition, to prevent compromising the effectiveness of inspections due to conflicts of interest, IEX Rule 5.110(c)(3)(B) 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.

To underscore the importance of this existing requirement in the context of remote inspections, proposed Supplementary Material .15(b) would expressly provide that consistent with a Member's obligation under Rule 5.110(b)(1), a Member that elects to conduct its calendar year 2021 inspections remotely 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. As proposed by the Exchange, reasonably designed procedures for conducting remote inspection of offices or locations should include, among other things, a description of the methodology, including technologies permitted by the member, that may be used to conduct remote inspections. In addition, such procedures should include 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.<sup>24</sup>

#### C. An Effective Supervisory System

Internal inspections are a critical component of a Member's fundamental obligation under IEX Rule 5.110 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. Proposed Supplementary Material .15(c) would expressly affirm this principle that: (i) The requirement to conduct inspections of offices and locations is one part of the Member's overall ongoing obligation to have an effective supervisory system; and (ii) a Member must continue with its reviews of the activities and functions occurring at all offices and locations, whether or not such offices or locations are due for an inspection under IEX Rule 5.110(c) in a given year or the Member's election to conduct such inspections remotely. In addition, under the proposed Supplementary Material, a Member's

<sup>24</sup> Offices or locations that may present a higher risk profile would include, for example, those that have associated persons engaging in activities that involve handling customer funds or securities, maintaining books and records as described under applicable federal securities laws and IEX rules, order execution or other activities that may be more susceptible to higher risks of operational or sales practice wrongdoing, or have associated persons assigned to an office or location who may be subject to additional or heightened supervisory procedures.

remote inspection of an office or location, like the traditional on-site inspection, would be held to the same standards for review as set forth under IEX Rule 5.110, Supplementary Material .12 (Standards for Reasonable Review).<sup>25</sup> Further, in accordance with this obligation, proposed Supplementary Material .15(c) would provide that where a Member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (*i.e.*, "red flags"),<sup>26</sup> the Member may need to impose additional supervisory procedures for that office or location, or may need to provide for more frequent monitoring or oversight of that office or location, or both, including potentially a subsequent physical, on-site visit on an announced

<sup>25</sup> IEX Rule 5.110, Supplementary Material .12 provides: "In fulfilling its obligations under IEX Rule 5.110(c), each Member must conduct a review, at least annually, of the businesses in which it engages. The review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with IEX rules. Each Member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, 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'), etc. The procedures established and reviews conducted must provide that the quality of supervision at remote locations is sufficient to ensure compliance with applicable securities laws and regulations and with IEX rules. A Member must be especially diligent in establishing procedures and conducting reasonable reviews with respect to a non-branch location where a registered representative engages in securities activities. Based on the factors outlined above, Members may need to impose reasonably designed supervisory procedures for certain locations or may need to provide for more frequent reviews of certain locations."

<sup>26</sup> Red flags that suggest the increased risk or occurrence of violations may include, among other events: Customer complaints; 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); 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 generally SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004); see also FINRA Regulatory Notices 98–38 and 99–45.

or unannounced basis when the Member's operational difficulties associated with COVID-19 meetings abate, nationally or locally as relevant, and the challenges the Member is facing in light of the public health and safety concerns make such physical, on-site visits feasible, using reasonable best efforts. Finally, to underscore the limited duration of proposed supplementary material expressly states that the temporary relief would not extend to a Member's inspection requirements beyond calendar year 2021 and that such inspections must be conducted in compliance with IEX Rule 5.110(c).

#### D. Documentation Requirement

In general, IEX Rule 5.110(c)(2) describes the documentation requirements associated with conducting internal inspections. The rule requires a member to reduce the inspection and review conducted under IEX Rule 5.110(c)(1) to a written report and specifies how long the member must keep the report on file.<sup>27</sup> If applicable to the location being inspected, IEX Rule 5.110(c)(2)(A) specifies 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: (i) Safeguarding of customer funds and securities; (ii) maintaining books and records; (iii) supervision of supervisory personnel; (iv) 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 (v) changes of customer account information, including address and investment

objectives changes, and validation of such changes. In addition to the requirements under IEX Rule 5.110(c)(2), proposed Supplementary Material .15(d) would require supplemental documentation by a Member that avails itself of the remote inspection option. The Member must maintain and preserve a centralized record for calendar year 2021 that separately identifies: (1) All offices or locations that had inspections that were conducted remotely; and (2) any offices or locations that 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. IEX believes that this documentation requirement would help readily distinguish the offices and locations that underwent remote inspections and their attendant supervisory procedures, and their more frequent monitoring, as applicable. IEX notes that even in the current environment, Members have an ongoing obligation to establish and maintain a system to supervise the activities of their associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX rules. IEX emphasizes that its proposed rule change is not intended to lessen the core obligations prescribed under IEX Rule 5.110. IEX believes that proposed Supplementary Material .15, which would permit firms to remotely inspect, subject to specified requirements described above, their offices and locations for any calendar year 2021 inspections, instead of an on-site visit to the office or location would provide Members a way to comply with IEX Rule 5.110(c) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. IEX notes that potential risks that may arise from providing Members the option to conduct their inspections remotely are mitigated by Members' use of technology to meet their supervisory obligations on an ongoing basis, the unique circumstances under which they are operating, and the temporary nature of proposed rule change, which would remain in place through December 31, 2021.<sup>28</sup> IEX will

continue to monitor the situation and engage with Members, other financial regulators, and governmental authorities to determine whether further regulatory relief or guidance related to IEX Rule 5.110(c) may be appropriate.

In addition, during the time that proposed Supplementary Material .15 remains in effect, IEX will closely monitor the effectiveness of remote inspections and their impacts—positive or negative—on Members' overall supervisory systems to assess whether to propose to make permanent a remote inspection option for some or all locations that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives underpinning the requirement to inspect branch offices or locations in accordance with IEX Rule 5.110(c).

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>29</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>30</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.

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

<sup>27</sup> In addition to requiring Members to conduct inspections of their offices and locations on a designated frequency, IEX Rule 5.110(c) generally requires a Member to 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 minimum of three years or, if the location's inspection schedule is longer than three years, until the next inspection report has been written. If applicable to the location being inspected, the inspection report must include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures, in specified areas. See IEX Rule 5.110(c)(2). In addition, 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. See IEX Rule 5.110(c)(3).

<sup>28</sup> See *supra* note 9.

<sup>29</sup> 15 U.S.C. 78f.

<sup>30</sup> 15 U.S.C. 78f(b)(5).

calendar year 2021 inspections. 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>31</sup> of the Act and Rule 19b-4(f)(6) <sup>32</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.

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>33</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 (<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-2021-09 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-2021-09. 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-2021-09 and should be submitted on or before July 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92230; File No. SR-BX-2021-028]

### **Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees, at Equity 7, Section 118(e)**

June 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") <sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 2021, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange's transaction fees, at Equity 7, Section 118(e), as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4(f)(6).

<sup>33</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

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

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