

November 6, 2015  
*Via Electronic Delivery*

Mr. Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: Investors' Exchange, LLC ("IEX"); Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934; Release No. 34-75925; File No. 10- 222.**

Dear Mr. Fields:

I manage a trading and investment partnership that adds liquidity in the shares of small-cap, listed companies.

Our partnership supports the efforts of IEX to create a more transparent and fair market. Although we make heavy use of automation ourselves, we believe that markets and the computers that now supply the bulk of their liquidity should ultimately serve human decision-making, not the other way around. To us, an ideal market is one that is comprehensible to retail and institutional investors, and most of IEX's unique features seem devoted to that goal.

We welcome efforts at slowing the markets down towards "human speed" without sacrificing the gains in market efficiency that have been realized in the last 20 years. A slightly slower, more stable quote, if adopted more widely, would boost investor confidence by reducing rapidly flickering or fleeting quotes. It is our hope that IEX's exchange approval will usher in a new era of thinking about the direction of market microstructure and how it can best serve the market's ultimate customers— investors (including pension holders) and the companies in which they invest.

However, our enthusiasm for IEX is tempered by concern over IEX's attempt to include "broker priority" (a form of queue jumping) as part of its feature set. Although IEX has removed "broker priority" — apparently in order to gain SEC approval — IEX has made it clear in a recent letter<sup>1</sup> that they have not given up on the possibility of including "broker priority" at some later date. For this reason, we recommend the approval of IEX's exchange application only with the caveat that any later effort on IEX's part to reintroduce "broker priority" should be met with stalwart rejection on the part of the SEC and other regulatory bodies.

Our opposition to queue jumping stems ultimately from a desire for fairness. If markets are made more fair and transparent, then confidence in markets

<sup>1</sup> <http://www.iextrading.com/policy/ceo-letter/>

increases. On the other hand, if retail investors try to add liquidity by improving the NBBO, yet the executions that otherwise would have crossed their resting orders are snatched by a queue jumper, then retail investors likely to conclude that the market is “rigged”.

Furthermore, the ability of a small group of large players to “jump the queue” disincentivizes lit liquidity — both in terms of spread and size — by effectively excluding almost all participants from most bona fide order flow in many small-cap equities. Such “excluded participants” would include retail and institutional buy-side firms taking a non-aggressive approach to a trade.<sup>2</sup>

In addition, “Broker priority” would introduce unknown complexity into the SIP data. Even if “broker priority” trades were properly labeled on the SIP (an outcome we consider uncertain), retail investors trading through the Web still wouldn’t see — much less understand — such a level of detail while attempting to ascertain market conditions for the stocks they wish to buy or sell. On the other hand, market manipulators might see heightened incentive to paint the tape under “broker priority”, as they could create “on-exchange” wash trades without the risk of an unexpected counterparty intervening to make an attempted wash trade unprofitable.

We thank the SEC for the opportunity to comment on these issues, and we look forward to seeing how the market evolves after IEX’s likely approval. We would also like to express our sincere appreciation to the SEC and its employees for its many successful efforts to improve the quality of US equity markets.

Respectfully submitted,  
Michael Jacejko  
Chief Executive Manager  
Birch Bay Capital, LLC

cc: The Honorable Mary Jo White, Chair  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Kara M. Stein, Commissioner  
The Honorable Michael S. Piwowar, Commissioner  
Stephen Luparello, Director, Division of Trading and Markets

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2 <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2012.n5.1>