



October 16, 2015

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File No. 4-631

Dear Mr. Fields:

IEX Services LLC (“IEX”) is pleased to write in response to the Commission’s request for comment on the above-referenced proposed amendment to the National Market System Plan to Address Extraordinary Market Volatility (the “LULD Plan”). The proposed amendment would extend the pilot period of the LULD Plan from October 23, 2015 to April 22, 2016.

IEX presently operates an alternative trading system (“ATS”) for U.S. equities. IEX offers a simplified and transparent model designed to eliminate many of the conflicts that are currently present in the financial markets. IEX accepts both non-protected “lit” quotes in addition to “hidden” orders of the type traditionally accepted by ATSs. Also, with investor-centric order types and advanced technology and architecture, IEX has sought to neutralize on its trading platform certain negative effects of structural inefficiencies in the national market system. IEX’s affiliate, Investors’ Exchange LLC, recently filed an application for registration as a national securities exchange.<sup>1</sup>

In light of the trading activity witnessed on August 24, 2015, much press and market commentary has focused on particulars of the terms of the LULD Plan as they affect exchange-traded products, the range of the price bands, the determination of reference prices, the relationship between price bands and “clearly erroneous execution” rules of the exchanges, and other matters. LULD Plan participants have already made some proposals which are worthy of consideration.<sup>2</sup> At the same time, we believe that as the Commission evaluates the terms of the LULD Plan, it should evaluate the impact of opening and reopening procedures of the primary listing exchanges as they can impact the operation of the LULD limits themselves and overall market volatility, as well as the means of disseminating information about trading interest and halts to all participants. Particularly in light of the August 24 experience, it seems clear to us that the volatility limits cannot be viewed in isolation from the impact of listing market and other SRO rules and procedures.<sup>3</sup> In particular, we believe that the following topics should be addressed, in consultation with the Equity Market Structure Advisory Committee (“EMSAC”).

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<sup>1</sup> Securities Exchange Act Release No. 75925, 80 Fed. Reg. 57261 (September 22, 2015).

<sup>2</sup> See Letter from Christopher B. Stone, FINRA, to Brent J. Fields, Secretary, SEC (May 28, 2015), available at <http://www.sec.gov/comments/4-631/4631-39.pdf>.

<sup>3</sup> BlackRock has recently issued a paper with helpful analysis and thoughtful recommendations addressing both the LULD Plan, opening procedures, and related matters. BlackRock Viewpoint, “US Equity Market Structure: Lessons from August 24 (October 2015), available at <http://www.blackrock.com/corporate/en-us/literature/whitepaper/viewpoint-us-equity-market-structure-october-2015.pdf> (“BlackRock Viewpoint”).

### **Address Issues Raised by Trading on August 24 Before Making Pilot Permanent**

As discussed further below, we believe that the experience of trading on August 24, 2015 exposed significant vulnerabilities, particularly at the opening of trading, in the effectiveness of the LULD Plan in limiting volatility, as well as the potential that aspects of exchange opening procedures, in tandem with the LULD price bands, can exacerbate rather than mitigate volatility. We believe it is imperative that these issues be fully considered and addressed prior to making the LULD Plan permanent.

### **Increase Certainty Around Setting of Opening Price**

So long as the primary listing markets are given responsibility to open and reopen stocks, it is vital that market participants are given assurance that stocks will be able to open in a way that is timely and promotes certainty. On August 24, 1,954 stocks listed on the New York Stock Exchange (“NYSE”) failed to open by 9:35 a.m.,<sup>4</sup> and market participants had limited information as to when individual stocks would open for trading on the primary listing market. Consideration should be given to requiring a backup, automated opening process, determined based on further consultation with the EMSAC and other market participants. The backup process should be used in all cases where the usual manual auction process does not result in setting an opening price by a time certain, but not later than 9:35 a.m.

Further, in order to give more certainty for market participants, consideration should be given to aligning the definition among the self-regulatory organizations of “regular trading hours” to take account of the possibility of a delayed opening. In particular, the definition of this term, for purposes of Commission and SRO rules, could be aligned to specify that regular trading hours for a security commences at the later of 9:30 a.m. or the opening of trading of the security on the primary listing market.

### **Modernize Floor-Based Rules and Procedures**

The operation of floor-based rules, and in particular NYSE Rules 48, 15, and 123D, in the context of the current electronic trading environment, needs to be reevaluated. While we appreciate that these rules are intended to provide flexibility to designated market makers and floor officials to manage bid-offer demand imbalances in a way that promotes orderly trading, the result in highly volatile market conditions can be directly contrary to that purpose. The language of the rules themselves fails to provide an appropriate degree of certainty as to how and when this discretion will be used, and some of the language seems antiquated on its face.<sup>5</sup>

### **Increase Availability of Imbalance Information**

Under NYSE Rule 15, the NYSE has authority to disseminate (though the rule does not by its terms mandate) the publication of order imbalance information at increasing frequencies between 8:30 a.m. and the opening of trading. We note that the current practice of the NYSE is to publish order imbalance information from 8:30 a.m. until a stock opens for trading, or until 9:35 a.m., whichever occurs first.

We note that NYSE is reportedly considering whether to change its current process for publishing order imbalances so as to extend the dissemination of imbalance information through its proprietary data feeds

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<sup>4</sup> BlackRock Viewpoint, at 11.

<sup>5</sup> For example, Rule 123D(1), Openings and Halts in Trading states in part: “Brokers must recognize that orders or cancellations merely dropped on the counter can be lost or misplaced, and should hand the order directly to the DMM or his or her assistant and orally state the terms.”

until the time that a stock opens for trading.<sup>6</sup> We believe this change would be helpful in providing important information to market participants, particularly in situations in which Rule 48 is invoked and price indications are not available, although we note that the rule by its terms presently calls for disseminating this information until the stock opens.<sup>7</sup>

More important, we believe that the purpose of providing information relevant to price discovery would be better and more equitably accomplished by publishing this information through the securities information processor (“SIP”), in addition to proprietary data feeds. In a different context, IEX recently has commented on the importance of ensuring that core market data is made fairly available to all market participants through the SIP. Given the importance to the market of imbalance information prior to the open, we believe that it should be considered as analogous to core data currently distributed through the SIP.<sup>8</sup>

### **Ensure Price Bands are in Effect When Reopening Stocks Following a Halt**

Further, following a trading halt under the Plan, because markets are able to resume trading upon receiving the reopening print of the primary listing market, and because of latency differences between SIP and proprietary data, trading may resume before the price bands have been equally disseminated to all market participants. In particular, we understand that because of this difference price bands are sometimes not in effect for 2-3 milliseconds after a reopening, which can further exacerbate volatility. One alternative could be to require that price bands be in effect and disseminated by the SIP (or by an individual market) before a stock may resume trading.

### **Expand the Representation of Stakeholders Under the LULD Plan**

More broadly, we believe that the Operating Committee of the LULD Plan should include buy-side and sell-side representatives. As is the case with all of the national market system plans adopted under Section 11A of the Securities Exchange Act of 1934, governance representation is limited to the existing exchanges and FINRA. IEX previously has proposed that the Operating Committee of the SIP plans should include buy-side and sell-side representatives in order to assure appropriate representation of the interests of stakeholders other than the incumbent exchanges, who often have conflicts of interests in performing this function, and in order to assure a greater level of accountability and transparency in the way that the function is exercised.<sup>9</sup> Similarly, the governance and operation of the LULD is a matter of important public concern that would benefit from representation of a broader range of stakeholders.

IEX believes that the LULD Plan, overall, has had an important and beneficial effect in limiting excessive volatility. At the same time, we believe that the objectives of the plan and market confidence will be best

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<sup>6</sup> See “NYSE Considering Lengthening DMM Time to Address Order Imbalances”, Traders Magazine (September 22, 2015).

<sup>7</sup> NYSE Rule 15(c)(3): “Order imbalance information disseminated prior to the opening of the security will be disseminated as follows...(iii) Approximately every 15 seconds between 9:20 am ET and the opening of trading in that security.”

<sup>8</sup> See Letter from John Ramsay, Chief Market Policy Officer, IEX, to Brent J. Fields, Secretary, SEC (August 20, 2015), available at <https://www.sec.gov/comments/sr-nyse-2015-31/nyse201531-2.pdf>. See also BlackRock Viewpoint, at 11 (recommending extending publication of pre-open imbalance information until a stock opens and “that regulators examine whether opening procedures should be further automated in order to promote fair and effective markets during conditions of market-wide volatility”).

<sup>9</sup> Letter from Donald Bollerman, Head of Market Operations, IEX, to Chair Mary Jo White, SEC (December 10, 2014), available at <https://www.sec.gov/comments/s7-02-10/s70210-425.pdf>.

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served by taking account of the lessons of August 24 prior to Commission action to make the pilot program permanent.

Sincerely,

A handwritten signature in black ink that reads "Donald J. Bollerman". The signature is written in a cursive style with a long, sweeping underline.

Donald Bollerman  
Head of Markets and Sales

cc: The Honorable Mary Jo White, Chair  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Michael S. Piwowar, Commissioner  
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets