

November 20, 2015

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

Re: Investor's Exchange LLC Form 1 Application, Release No. 34-75925, File No. 10-222

Dear Mr. Fields:

Thank you for the chance to comment on the Investor's Exchange ("IEX") Form 1 filing ("Filing"). Like many others I was convinced the SEC would never allow a market center to wedge-in an intentional delay before it processed an order ("Speed Bump"), which IEX proposes to do as a full-throated, registered stock exchange. It struck me as terrifically unfair, even un-American, for a market center to intentionally delay customer orders and trade reports. No surprise then the idea was proposed by IEX, a firm run by a Canadian native, a people at odds with America since the Saratoga Campaign of 1777, if not before. With their maple syrup voices and their Quebecois charm, it shouldn't surprise anyone a Canadian wants to hobble the rest of us.

So I cheered when one exchange after another, a hedge fund, and a lobbyist group for high frequency traders (collectively, "IEX Critics") wrote to complain about that Speed Bump. They said things like "a quotation must be immediately and automatically accessible," and rightly pointed out the Filing's deceptions by comparing it to "the 'non-fat yogurt' shop on Seinfeld, which actually serves tastier, full-fat yogurt to increase its sales." They quoted policy statements from the SEC, including the Reg NMS approval order ("Approval Order"): "[t]he term 'immediate' precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation."

We follow the law in this country, and I was glad to see incumbent exchanges and some of their biggest customers remind the SEC of the agency's own policy statements and the law. Then IEX responded¹, and I got very worried. That crafty Canadian-led group pointed out how all the major exchange groups use "delay coils" to equalize access within their data centers, and, even more worrisome, IEX pointed to all the intentional devices exchange groups sell to advantage whoever buys those devices over everyone who doesn't. IEX even had the chutzpah to observe that the flip side of faster access is slower access if you don't pay.

If deliberately slower access is an "intentional device that would delay the action taken with respect to a quotation," as the IEX Critics' reasoning certainly implies, the problem isn't just that all the major exchange groups use "delay coils" to equalize access within their data centers. The problem is that you have to pay to get into their data centers in the first place, and if you don't it sure looks like you are intentionally delayed compared to those who can and do pay.

¹ Letter to Brent Fields, Secretary, SEC, from Sophia Lee, General Counsel, IEX (November 13, 2015).

It gets worse! Even within exchange data centers, exchanges charge fees depending on the speed of your connections. A 10gb connection is certainly delayed with an "intentional device" - you know, routers, switches and the like - relative to a much more expensive 40gb connection, especially when the faster connection is priced out of all proportion to its actual cost, especially when the public SIP feeds have average delays of 500 microseconds to one millisecond and the SEC's own statistics show that billions of quotes are stale before they are ever broadcast by the SIPs.

Where does this logic take us? I naturally started to wonder that if the IEX Critics are right, by their own reasoning the exchanges will have to dismantle their co-location facilities and stop offering tiered high-speed network facilities. They are selling faster access to their markets, and if you don't pay, aren't you slower than you could be, aren't you intentionally delayed?

We're left with a conundrum. While I agree with the exchanges and lobbyists and hedge funds it is terrifically unfair to delay orders, in America we generally agree it's all right to buy even the most handsome privileges so long as anyone with enough money is free to do it. It's in our DNA. A senior FINRA executive once compared co-location and high-speed connections to traveling in first class, and what's wrong with paying more to travel in first class? That's the sneakiest part of IEX and the Speed Bump. No matter who you are, no matter how much money you have, no matter where you went to university, no matter how devoted an Objectivist you are, you can't pay more to travel in first class. On IEX, everyone is in first class.

It gets worse! If the IEX Critics persuade the SEC that the plain language of the Approval Order forbids market centers from intentionally delaying access to quotations, will the SEC force the exchange groups to dismantle their co-location data centers and tear down their high-priced lightspeed networks? Will the SEC bully American markets to offer equal access to everyone regardless of any ability or hunger to pay millions for privileged access? Because if that ever happens, the Canadian will have won.

There's a simple solution to all this. The SEC should clarify the Approval Order language with one modest revision. It's sure to please everyone. The SEC has better wordsmiths than me, but something like "[t]he term 'immediate' precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation *unless you don't pay*" should do it.

Sincerely,

R. T. Leuchtkafer