



MODERN MARKETS  
INITIATIVE

December 3, 2015

VIA E-MAIL

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C., 20549-1090

Re: Investors' Exchange LLC Form 1 Application (Release No. 34-75925; File No. 10-222)

Dear Mr. Fields:

Modern Markets Initiative ("MMI"), the industry association dedicated to education and advocacy in support of the benefits of high frequency trading (HFT), appreciates the opportunity to provide written comments in connection with the Investors' Exchange LLC ("IEX") Form 1 application ("Application").

We acknowledge the many thoughtful comment letters that have prompted an industry debate on the approval of an exchange that would be the first to introduce intentional latency to all investors at its point-of-presence. It sets a new precedent that will likely spur further exchange proliferation as a competitive response.

Based on our reading of IEX's comment letters, we believe IEX realizes it will need an extraordinary exemption for its unprecedented functionality and has sought to frame the Commission's approval decision thusly: **"Is there room in the national market system for an exchange to adopt any means, however narrowly drawn, to counteract the more pernicious aspects of speed-based trading?"**<sup>1</sup> (Emphasis not added)

By its stated premise, IEX creates a burden of proof it fails to meet. It does not provide any data establishing the presence of "pernicious aspects of speed-based trading" that should compel the Commission to allow exchanges to adopt "any means" to remedy them. At its thesis, this Application demonizes high frequency trading while providing no basis for its conclusions.

In addition, IEX has failed to produce data that quantifies how its intentional delay protects investors from the alleged pernicious effects of high-speed trading in a way that other exchanges compliant with immediate execution and reporting requirements do not. In today's modern market ecosystem, this delay serves to slow the execution of orders and deny investors in other markets timely information to ensure efficient pricing. In this context, it is difficult to determine if the delay will benefit the ecosystem or simply impose costs on investors and the overall market for the sole benefit of IEX users.

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<sup>1</sup> IEX comment letters dated November 13, 2015 and November 23, 2015 Re: Investors' Exchange LLC Form 1 Application (Release No. 34-75925; File No. 10-222) <https://www.sec.gov/comments/10-222/10222-20.pdf> and <https://www.sec.gov/comments/10-222/10222-26.pdf>, respectively.

Recently, a lawsuit that sought to indict the “pernicious” aspects of speed-based trading was dismissed in a strongly worded opinion by a U.S. District Court. The lawsuit<sup>2</sup>, brought by the City of Providence, Rhode Island v. Bats Global Markets, Inc. et al, named 16 national securities exchanges, 12 securities brokers, and 11 HFT firms as defendants. In justifying the dismissal<sup>3</sup>, Judge Jesse M. Furman writes, “a plaintiff must show ‘more than a sheer possibility that a defendant acted unlawfully,’ and cannot rely on mere ‘labels and conclusions’ to support a claim, Twombly, 550 U.S. at 555. If the plaintiff’s pleadings ‘have not nudged [his or her] claims across the line from conceivable to plausible, [the] complaint must be dismissed.” While Judge Furman makes no judgment on the merits of HFT, his court found allegations brought against it were not “legally sufficient.” It set an important precedent for the fair treatment of market participants of all types.

IEX is free to compete and offer innovation to the marketplace. Several MMI Members trade on IEX and, similar to what HFT firm Virtu has stated<sup>4</sup>, engage in the same market making strategies on IEX as on automated trading systems run by other broker-dealers. However, when any firm petitions the Commission with a proposal to use extraordinary means to counteract harm to investors it cannot prove exists, we believe the application should be rejected on principle.

For these reasons, we question why the Commission should grant IEX any type of exemption from the clear rules of Regulation NMS.

Finally, in answer to IEX’s question about whether there is a place for it in the National Market System, we would point out that the place is very clearly as an ATS. Innovation outside the stricter standards and responsibilities of a registered exchange is the reason the Commission promulgated the ATS structure.

Thank you for your consideration.

Very truly yours,



William R. Harts, CEO  
Modern Markets Initiative

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

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<sup>2</sup> The City of Providence, Rhode Island v. Bats Global Markets, Inc. et al  
[http://www.cadwalader.com/thecabinet/get\\_doc.php?id=33594](http://www.cadwalader.com/thecabinet/get_doc.php?id=33594)

<sup>3</sup> United States District Court Southern District of New York Opinion and Order in re: Barclays liquidity cross and high frequency trading litigation <http://cases.justia.com/federal/district-courts/new-york/nysdce/1:2014cv02811/426016/282/0.pdf?ts=1440689782>

<sup>4</sup> Virtu Financial comment letter dated November 6, 2015 Re: Investors’ Exchange LLC Form 1 Application (Release No. 34-75925; File No. 10-222) <https://www.sec.gov/comments/10-222/10222-12.pdf>