April 15, 2016

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

Submitted via: SEC.gov

Re: Release No. 34-77407; File No. S7-03-16; Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS

Dear Mr. Fields,

The SEC is currently weighing a radical interpretation of automated quotation rules under Regulation NMS that will determine the fate of the Investors' Exchange (IEX) quest for exchange status, a goal that IEX has pursued aggressively via media and regulatory channels. The SEC has now floated the idea that an execution time of less than one millisecond – in which IEX's 350-microsecond delay would fall – could be considered "de minimis" and therefore inconsequential to the National Market System of protected quotes among recognized exchanges.

Upon reflection of the proposed de minimis interpretation, I'd argue that implementing that type of definition into Regulation NMS will make equity market structure considerably more complex, take away a significant measure of trader control, and set up an environment ripe for technological hiccups. Specifically, as I've commented before,[1] technological speed bumps in execution time will lead to negative systemic consequences, such as ghost quotes—"now you see them now you don't" untradeable bids or offers— that cloud price discovery and corrode execution quality.

In 2005, the SEC declared that take fees of less than $0.30 per hundred are de minimis, or so small as to be negligible to the value of a trade, and therefore can be left out of the quote itself. At the time it was felt that brokers would be responsible for keeping track of and understanding the fees at various venues, and to display the quotes adjusted for the very small fees might create too much quote traffic for the burgeoning electronic markets.

And now, the SEC may declare an amount of time de minimis based on the same concept: execution times of less than one millisecond, technological or not, are irrelevant to the trader's results and to the National Market System as a whole. When it comes to equity trading, however, a fixed cost fee that may vary by venue is far easier to account for than a time delay arbitrarily applied but with universal impact.

Declaring a de minimis amount of cost of less than $0.30 per hundred shares creates a fixed amount that is the same for every trade at a particular venue, no matter the condition, speed or size of the

[1] D. Keith Ross, Jr., PDQ Enterprises, LLC comment letter regarding File No. 10-222, March 16, 2016: https://www.sec.gov/comments/10-222/10222-449.pdf

market. It's been straightforward for market participants to integrate this ruling into exchange, broker-dealer and retail systems. Maker-taker concepts such as this even led to taker-maker models, which have also not disrupted market structure at large. When considering de minimis costs, the impact occurs only on the venue that sets the take fee.

But de minimis time is a very different animal indeed.

If IEX is granted protected quote status, the sender of the order won't have the option to make a different choice to avoid the speed bump. The de minimis interpretation means that by rule the order would have to go to IEX should its quote be the best at that time. While a take fee has a deterministic impact on trade performance, almost always very tiny, the rule allows order senders to account for that impact if they want to. The latency on a protected quote, on the other hand, can have a widely varied effect on fill probability depending on market conditions, but the trader has no control—the rule does not allow order senders to account for the impact of such variation, or make associated decisions affecting execution quality.

Considering this, taking any level of execution control and choice away from the investment community should be a non-starter for SEC.

Finally, when considering de minimis times, the potential impact expands beyond individual users to all other protected quote venues. Intentionally varied quote display and execution times will affect National Best Bid and Offer (NBBO) values across all 11 exchanges and 40-plus ATS markets.

As an ATS, IEX can implement a delay of its choosing with no objections from the industry at large (PDQ ATS operates with a delay as well, though one designed to solicit hidden liquidity and price improvement). But as an exchange, with very real ties and obligations to the other 11 existing exchanges in particular, the market execution effects of the IEX speed bump would be immediate and systemic.

If other exchanges were also to implement their own de minimis delays in response to IEX's, the obfuscation for price discovery could be dramatic. It is easy to envision smart order routers chasing ghost quotes at high speed, with systemic meltdown risks dramatically increased.

Put simply, an artificial delay in an exchange quote anywhere affects the markets everywhere.

It now becomes necessary to accept the facts about IEX's model as it stands. IEX's ideas and goals for a fair market should be applauded, and indeed, honed further in the future. But as an exchange, whereby they would be granted a protected quote, the result could easily be a market of ghost quotes appearing and disappearing according to varied de minimis execution delays—exactly the opposite of IEX's claimed desire for a fairer, simpler market.

It appears that the SEC may have reversed their usual exchange approval process, deciding to change the rules to fit the application. And even if the de minimis argument fails, there are any number of other regulatory rule change possibilities that could be called upon to shoehorn IEX into exchange status as well, including mandating one data feed for all exchanges, eliminating protected quotes altogether, or allowing crossed and locked markets.

The proposed de minimis time definition, would all be a major step backward for the world's most efficient and accessible equity market. The SEC can avoid that certain black eye by recommitting to market health as a whole, and avoid catering to one media-savvy participant.

Respectfully submitted,

D. Keith Ross

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