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April 25, 2016

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

Re: Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS (Release No. 34-77407; File No. S-7-03-16)

Dear Mr. Fields:

IEX Group, Inc. ("IEX") is writing to respond to the Commission's request for comment on its proposed interpretation regarding automated quotations under Regulation NMS. In brief, the Commission has proposed to interpret "immediate" in determining whether a trading center maintains an "automated quotation" under Rule 611 of Regulation NMS (the Order Protection Rule), to permit intentional or unintentional response time delays that are *de minimis* (generally, less than one millisecond) (the "Proposed Interpretation").[1]

We agree with many commenters who have highlighted the need for greater clarity and detail with respect to the 1 millisecond* de minimis *threshold, and the Commission should clarify that any access proposals must be reviewed by the Commission for compliance with the Exchange Act.

As reflected in our third response letter,[2] we believe that any new guidance applied to an exchange's intentional design should take into account not just the length of any delay, but also the means used, how it is applied to participants, and its purpose and effect. This will help to ensure that any interpretive guidance is squarely focused on the central purpose of the rules themselves, which is to advance the interests of long-term investors.

How an exchange provides access is an important part of its operations and any access arrangements require exchange filings for SEC review. This rule filing process ensures equal treatment of exchanges and a high level of transparency to the public, which is critical in order for the Commission to consider public comments. More important, this process ensures that market innovations are properly aligned with the protection of investors, the promotion of just and equitable principles of trade, and the maintenance of fair and orderly markets.

The IEX "speed bump" is a specific and unique response to the desire of long-term investors to access the best and most accurate prices in competition with the fastest short-term traders. Setting the speed bump at only 350 microseconds allows access on par with the typical latency incurred on other

[1] Exchange Act Release No. 77407 (March 24, 2016).
[2] Letter to Brent J. Fields, Secretary, SEC, from Sophia Lee, General Counsel, IEX, dated February 9, 2016 ("Third Response Letter").

exchanges.[3] First, IEX uses a method (*i.e.*, coiling of fiber) that is already widely used by other exchanges (*e.g.*, in Nasdaq's data center as described in a recent letter from Nasdaq[4]). Second, IEX applies to all orders and participants, including IEX's affiliated broker-dealer (unlike Nasdaq PSX's previously proposed "speed bump"[5]). Third, IEX is the first exchange access proposal designed to protect long-term investors from incurring excess, often implicit, costs as a result of interacting with certain speed-based trading strategies. The speed bump is fully described in our proposed rules. It has been exhaustively vetted and commented on, and supported by a broad spectrum of industry and general public commenters, many of which have attested to its value from their perspective.

Thus, if the Commission finalizes new guidance, at a minimum it should make clear that exchanges remain obligated to file, and the Commission must review, any exchange access proposal for compliance with the public interest standards of the Securities Exchange Act of 1934, regardless of any intentional delay or the duration of the delay.

It is worth noting that Canadian regulators have recently issued rule amendments that would allow markets with equally-applied speed bumps to be considered protected under their rules based on the regulators' review of all relevant factors:

> The determination of whether the marketplace with a delay offers the ability to immediately execute an order would also be based on, among other factors, **how the operational model of the marketplace itself is applied**, and the impact of the model or delay as it relates to **fair and orderly trading**. Although these delays generally would be considered intentional, they could still result in "immediate" executions on that marketplace, despite the fact that executions could be achieved faster on **marketplaces that make different decisions**.[6]

The Proposed Interpretation should be considered separately from IEX's Form 1 application to register as a national securities exchange (as amended, the "IEX Application"), which should be promptly approved.

We agree with letters sent by investors and other commenters stating that the Proposed Interpretation should be considered separate and distinct from the IEX Application. In contrast, a narrow group of parties seeking to preserve their ability to monetize speed are attempting to use questions or concerns about the interpretation as a pretext to justify disapproving the IEX Application, or to preclude treating IEX quotes as "protected." We believe those comments falsely link the two decisions.

As we have extensively documented during this comment period, our Application complies with the rules as written and should be approved on its own merits. We are only seeking the same flexibility that

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[3] Letter to Brent J. Fields, Secretary, SEC, from Sophia Lee, General Counsel, IEX, dated November 23, 2015 ("Second Response Letter").

[4] Letter to Brent J. Fields, Secretary, SEC, from Joan C. Conley, Senior Vice President, Nasdaq, dated April 14 2016 ("Nasdaq Letter").

[5] *See* Exchange Act Release No. 67680 (August 17, 2012).

[6] Canadian Securities Administrators, Notice of Approval – Amendments to National Instrument 23-101 Trading Rules and Companion Policy 23-101CP to National Instrument 23-101 Trading Rules (April 7, 2016).

other exchanges have been afforded, but with the distinction that we have designed our market in a way that prioritizes the interests of long-term investors over short-term traders.[7]

Suggestions that IEX approval would increase market complexity or unleash a flood of new complicated order types are baseless.

Recent comments, including from Nasdaq and NYSE[8], that approving IEX or any "artificial delay" would lead to a proliferation of new speed-based order types and a more complicated market structure are baseless. First, they completely disregard the role of the incumbent exchanges in creating the complexity that currently exists. Second, they completely disregard or underestimate the Commission's oversight role, the importance of public comment, and the potential for investors to affect how markets evolve. Any order type proposal would be subject to public comment and would need to justify why it was consistent with fair and orderly markets and investor protection. Given the extent of public awareness and interest in these issues demonstrated by investors and other participants during the IEX Application process, we believe that any order type that could have a deleterious effect on long-term investors or overall market quality would be heavily scrutinized and is unlikely to be approved under the public interest standards of the Exchange Act.

Investors should have the right to an exchange that offers protection from latency arbitrage.

Throughout this comment period, it has become painfully obvious that the existence and impact of latency arbitrage have purposely been obfuscated. The goal of the National Market System is to provide investors with an effective opportunity to receive the best current prices in the marketplace. Given the complexity of today's markets, this is an extremely difficult task for many investors.

There are two factors that are of prime importance to investor executions: (1) the sequencing of trades and (2) the dissemination of information about trades.

If there were only a single market, trades and information would be forced into a clear sequential relationship, where trades are executed with a full understanding of current information, and information reflects a full understanding of trades that have occurred. With two markets (Market A and Market B), the possibility emerges for a fast participant to conduct latency arbitrage by racing between markets. A high-speed trader may gain an edge by using information from Market A to trade on Market B, and vice versa, against a slower investor who has yet to receive the same information. This type of advantage can, at times, guarantee profits. Markets A and B themselves participate in these profits by charging tolls for the privilege to trade faster, furthering the disparity, and increasing the opportunities for profit from selling or using speed. In the current system, these opportunities multiply with the number of additional markets.

[7] *See* Third Response Letter.
[8] *See* Nasdaq Letter; Letter to Brent J. Fields, Secretary, SEC, from Elizabeth King, General Counsel, NYSE Group, dated April 18, 2016 ("NYSE Letter").

Consider in this same example that Market A is IEX. IEX's 350 microsecond speed bump will help prevent the disparity of latency arbitrage in two ways:

1. It helps to prevent a high-speed trader from using information from IEX to potentially trade ahead of an IEX member looking to trade on Market B. This protection is offered by IEX's router, which has been aggressively opposed by certain high speed traders and exchanges.
2. It helps to prevent a high-speed trader from using information on Market B to potentially "pick off" a non-displayed order resting on IEX by allowing information from Market B to be disseminated to IEX so that the order can be fairly priced. This protection is offered by IEX's "pegged" order types, which, again, have been aggressively opposed by certain high speed traders and exchanges.

As noted in one comment letter,[9] high-speed traders know it generally takes "less than ¼" of a millisecond (250 microseconds) for orders and information to travel between the major exchanges for the fastest traders. If IEX were to become approved as a protected venue with a 350 microsecond speed bump, their ability to profit from latency arbitrage would be diminished on IEX, and investors would have the option of trading on an exchange that offers protection from it.

To be clear, IEX is not asking for a regulatory judgment on whether latency arbitrage should or should not be allowed. We are simply seeking to provide investors with the choice of an exchange that works to protect them from it.

IEX's automated quotations qualify as protected quotes.

Several commenters have suggested IEX should be approved but without a protected quotation, thus classifying IEX as a "manual market." We strongly believe that treating IEX as such is incompatible with the way the rules distinguish manual from automated quotations.[10] It would also deny investors the choice of an exchange that is designed to protect their resting orders, which could bring more long-term investor liquidity to the public markets. The denial of such a choice would perpetuate a trend of growing off-exchange volume based on the unnatural prioritization of short-term liquidity incentives by exchanges, including rebates, special order types, and special access, in return for fleeting bids and offers, many cancelled within small fractions of a second. Further, the design of our market, as reflected in the IEX Application and our rules, is premised on the existence of a protected quote, and any other outcome that denies protected quotation status would essentially amount to disapproval of the IEX Application.

Conclusion

Markets cannot self-correct or evolve in ways that respond to the needs of investors if regulation is used as a discriminatory barrier to prevent them from doing so. Opposition to the IEX Application is a clear

[9] Letter to Brent J. Fields, Secretary, SEC, from Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group, dated April 14, 2016 ("FIA PTG Letter").
[10] The Commission discussed this distinction in the Proposed Interpretation. *See supra* note 1.

attempt by interested parties to defend today's predominant business model, which allows them to benefit by a single-minded prioritization of speed above other considerations, in particular investor protection and fair and orderly trading. The IEX Application is supported by the long-term investors that the regulation was intended to serve and who represent the lifeblood of the equity markets. The record clearly demonstrates that IEX is proposing an alternative that investors want and that fully meets the standards of the Exchange Act. Our Application should be approved as filed.

Regards,

Sophia Lee

Sophia Lee

General Counsel

cc: The Hon. Mary Jo White, Chair
The Hon. Michael S. Piwowar, Commissioner
The Hon. 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
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