

# COMMITTEE ON CAPITAL MARKETS REGULATION

April 14, 2016

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Brent J. Fields, Secretary  
File Number S7-03-16

Re: Notice of Proposed Interpretation Regarding Automated Quotations Under Regulation National Market System (the “**Proposed Interpretation**”)<sup>1</sup>

Dear Sir:

The Committee on Capital Markets Regulation (the “**Committee**”) is grateful for the opportunity to comment on the U.S. Securities and Exchange Commission’s (“the **SEC**” or the “**Commission**”) Proposed Interpretation regarding automated quotations under Regulation National Market System (“**Reg NMS**”).<sup>2</sup>

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-four leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and directed by Hal S. Scott (Nomura Professor and Director of the Program on International Financial Systems, Harvard Law School). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Rule 611 of Reg NMS protects the best automated quotations of national securities exchanges (“**exchanges**”) by obligating other exchanges, alternative trading systems, and broker-dealer internalizers to execute trades at that price or better.<sup>3</sup> These are referred to as “protected” quotations.<sup>4</sup> The question of whether the SEC should permit some degree of intentional delay for protected quotations has been raised by Investors’ Exchange LLC’s (“**IEX**”) Form 1 application seeking registration as an exchange.<sup>5</sup> The Committee does not take a position as to whether the SEC should approve IEX’s exchange application. In fact, certain of the Committee’s members support the application,<sup>6</sup> while others do not.<sup>7</sup>

---

<sup>1</sup> Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS, 81 Fed. Reg. 15,660 (Mar. 24, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-03-24/pdf/2016-06633.pdf>.

<sup>2</sup> Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS, 81 Fed. Reg. 15,660 (Mar. 24, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-03-24/pdf/2016-06633.pdf>.

<sup>3</sup> See 17 C.F.R. § 242.611 (2015).

<sup>4</sup> *Id.* § 242.600(b)(57)-(58).

<sup>5</sup> See Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS, 81 Fed. Reg. 15,660, 15,661-65 (Mar. 24, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-03-24/pdf/2016-06633.pdf>.

<sup>6</sup> See Cowen Group, Inc., Comment Letter on Investors’ Exchange, LLC Exchange Application (Nov. 2, 2015), <https://www.sec.gov/comments/10-222/10222-8.pdf>; Goldman, Sachs & Co., Comment Letter on Investors’ Exchange, LLC Exchange Application (January 12, 2016), <https://www.sec.gov/comments/10-222/10222-318.pdf>; Dave Michaels, *J.P. Morgan Executives Say Regulators Should Approve IEX as an Exchange*, WALL ST. J., Mar. 22,

## COMMITTEE ON CAPITAL MARKETS REGULATION

Our focus is on the SEC's Proposed Interpretation, which would allow exchanges to apply intentional delays of less than 1 millisecond and still enjoy protected quotes.<sup>8</sup> In our view, an intentional delay of less than 1 millisecond on protected quotes could represent a significant change to the equity market structure if an exchange applied the delay in a selective manner. Under the SEC's Proposed Interpretation, exchanges could do so by using different order types to apply intentional delays to some market participants but not to others.<sup>9</sup> This could distort markets and it is unclear whether the selective application of intentional delays would be beneficial for long-term investors. Exchanges should therefore not be broadly permitted to adopt intentional delays of less than 1 millisecond. Instead, we believe that the SEC should evaluate the merits of each proposed intentional delay to protected quotes by an exchange and ensure that any such delays are equally applied to all market participants.

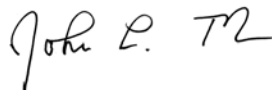
\* \* \* \* \*

Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's Director, Prof. Hal S. Scott ( [REDACTED] ), or its Executive Director of Research, John Gulliver [REDACTED], at your convenience.

Respectfully submitted,



R. Glenn Hubbard  
CO-CHAIR



John L. Thornton  
CO-CHAIR



Hal S. Scott  
DIRECTOR

---

2016, <http://www.wsj.com/articles/j-p-morgan-executives-say-regulators-should-approve-iex-as-exchange-1458687316>.

<sup>7</sup> Hudson River Trading LLC, Comment Letter on Investors' Exchange LLC Form 1 Application (Dec. 4, 2015), <https://www.sec.gov/comments/10-222/10222-33.pdf>; Citadel LLC, Comment Letter on Investors' Exchange, LLC Exchange Application (Feb. 23, 2016), at 4, <https://www.sec.gov/comments/10-222/10222-411.pdf>.

<sup>8</sup> Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS, 81 Fed. Reg. 15,665 (Mar. 24, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-03-24/pdf/2016-06633.pdf>.

<sup>9</sup> E.g., Professor Charles M. Jones, Columbia University Business School, Comment Letter on Investors' Exchange, LLC Exchange Application (Mar. 2, 2016), at 2-3, <https://www.sec.gov/comments/10-222/10222-433.pdf>.