

# COMMITTEE ON CAPITAL MARKETS REGULATION

October 13, 2016

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn: Brent J. Fields, Secretary  
File Number SR-CHX-2016-16

Re: Notice of Filing of Proposed Rule Change to Adopt the Chicago Stock Exchange Liquidity Taking Access Delay (the “**CHX Proposal**”)

Dear Sir:

The Committee on Capital Markets Regulation (the “**Committee**”) is grateful for the opportunity to comment on the CHX Proposal.

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 Regulation National Market Structure (“**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>1</sup> These quotations are referred to as “protected” quotations.<sup>2</sup> The question of whether the SEC should permit some degree of intentional delay for protected quotations was initially raised by Investors’ Exchange LLC’s (“**IEX**”) Form 1 application seeking registration as an exchange.<sup>3</sup> The Committee did not take a position as to the SEC approval of IEX’s exchange application. In fact, certain of the Committee’s members supported the application,<sup>4</sup> while others did not.<sup>5</sup>

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<sup>1</sup> See 17 C.F.R. § 242.611 (2015).

<sup>2</sup> *Id.* § 242.600(b)(57)-(58).

<sup>3</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>4</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, 2016, <http://www.wsj.com/articles/j-p-morgan-executives-say-regulators-should-approve-iex-as-exchange-1458687316>.

<sup>5</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>.

## COMMITTEE ON CAPITAL MARKETS REGULATION

In June 2016, the SEC interpreted that Rule 611 of Reg NMS allows an exchange to apply an intentional delay of less than 1 millisecond and still enjoy projected quote status.<sup>6</sup> The Committee believes that its comment letter to the SEC regarding its proposed interpretation of Rule 611 of Reg NMS is relevant to the SEC's evaluation of the CHX Proposal.<sup>7</sup> The relevant portion of that comment letter is excerpted below:

"The SEC's Proposed Interpretation 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* [emphasis added]."

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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 (████████████████████), or its Executive Director of Research, John Gulliver (████████████████████), at your convenience.

Respectfully submitted,



John L. Thornton  
Co-CHAIR



Hal S. Scott  
DIRECTOR



R. Glenn Hubbard  
Co-CHAIR

<sup>6</sup> Commission Interpretation Regarding Automated Quotations Under Regulation NMS (June 17, 2016), <https://www.sec.gov/rules/interp/2016/34-78102.pdf>

<sup>7</sup> Committee on Capital Markets Regulation, Comment Letter on the SEC's Notice of Proposed Interpretation Regarding Automated Quotations Under Regulation National Market System (April 14, 2016), <https://www.sec.gov/comments/s7-03-16/s70316-8.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>.