



April 24, 2017

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

RE: Securities Exchange Act Release No. 79998 (February 9, 2017); SR-NYSEMKT-2017-05

Dear Mr. Fields:

Bats Global Markets, Inc., a CBOE Company (“Bats”), appreciates the opportunity to comment on the above-referenced proposed rule change in which NYSE MKT LLC (“NYSE MKT”) proposes to adopt a delay mechanism that would add the equivalent of 350 microseconds of latency to inbound and outbound order messages similar to the intentional delay mechanism currently in place on the Investors Exchange LLC (“IEX”). At a high level, Bats reiterates its position that speed bumps of the nature that IEX employs and NYSE MKT is proposing provide zero benefits to displayed orders¹ and that speed bumps in general add unnecessary complexity to our markets. However, in light of the Commission’s approval of IEX’s delay mechanism² and the Commission’s related interpretation of Rule 611 of Regulation NMS,³ Bats sees no legal grounds for the Commission to disapprove NYSE MKT’s proposed rule change.

Approval of IEX’s delay mechanism has encouraged other exchanges to file proposals with the Commission to adopt related functionality.⁴ The proposed delay mechanisms, as well as those that are likely to be proposed in the future, raise interpretive issues under Regulation NMS that Bats encourages the Commission to address on a holistic basis rather than through the SRO rule filing process. Bats remains concerned that should the Commission continue to address issues raised by complicated order types and delay mechanisms on an ad hoc basis through SRO

¹ With recent SIP processing improvements, subscribers of the SIP’s are likely to receive and react to quote and trade updates from IEX faster than IEX customers getting their executions, which are subject to the 350 microsecond delay. It is not clear how effective IEX’s speedbump is in protecting its customers from information leakage. See <https://meanderingful.blogspot.com/2017/04/iex-trading.html>.

² See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2017) (“IEX Approval Order”).

³ See Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2017) (File No. S7-03-16) (“Rule 611 Interpretation”).

⁴ See e.g., Securities Exchange Act Release Nos. 80041 (February 14, 2017), 82 FR 11252 (February 21, 2017) (SR-CHX-2017-04) (Notice of Filing of Proposed Rule Change to Adopt the CHX Liquidity Taking Access Delay); 80149 (March 3, 2017), 82 FR 13168 (March 9, 2017) (SR-Nasdaq-2016-161) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Nasdaq’s proposed Extended Life Priority Attribute).

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rule filings, that the resulting narrowly focused piecemeal interpretations of the provisions of Regulation NMS will cause confusion about what is and is not permissible and further serve to unnecessarily complicate market structure.⁵ For instance, commenters on the CHX proposal to introduce an asymmetrical delay have also questioned that proposal's compliance with Rule 602 of Regulations NMS (the "Firm Quote Rule")⁶ and approval of that proposal, if granted, will likely require the Commission to issue related interpretive guidance, like it did when approving IEX's delay. Bats, therefore, again urges the Commission to proactively set forth clear and comprehensive standards for exchanges and other market participants with regard to access delays. Such Commission guidance should provide a common, singular framework under which exchanges would operate when seeking to adopt complicated order types and various delay mechanisms. Our market structure should not be a patchwork of Commission interpretations.

Bats appreciates the opportunity to comment on the above proposed rule change. Please feel free to contact Bryan Harkins at [REDACTED] or I at [REDACTED] if you have any questions related this matter.

Sincerely,



Joanne Moffic-Silver
Executive Vice President, General
Counsel, and Corporate Secretary

⁵ Bats expressed similar concerns regarding CHX's proposed Liquidity Taking Access Delay, which CHX subsequently withdrew. *See* letter from Eric Swanson, EVP and General Counsel, to Mr. Brent J. Field, Secretary, Commission, dated October 25, 2016. Securities Exchange Act Release Nos. 78860 (September 16, 2016) (SR-CHX-2016-16) and 79984 (February 7, 2017), 82 FR 10521 (February 13, 2017) (SR-CHX-2016-16) (Notice of Withdrawal).

⁶ 17 CFF 242.602. *See e.g.*, letters from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, Inc. ("NYSE") to Mr. Brent J. Field, Secretary, Commission, dated March 20, 2017; and Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel Securities, to Mr. Brent J. Field, Secretary, Commission, dated March 14, 2017.