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April 28, 2017

VIA E-MAIL

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

Re: Securities Exchange Act Release No. 79998 (February 9, 2017), 82 FR 10828 (February 15, 2017) (SR-NYSEMKT-2017-05) (the "Proposal")

Dear Mr. Fields:

NYSE MKT LLC ("NYSE MKT" or the "Exchange") appreciates the opportunity to respond to the second comment letter that Investors Exchange LLC ("IEX") has submitted in connection with the Proposal.[1]

IEX reiterates arguments from its first comment letter that the Exchange has not provided sufficient explanation and justification for the Proposal to allow the Securities and Exchange Commission ("Commission") to approve the Proposal. IEX restates much of its own advocacy for the IEX exchange application, including its speed bump, and argues that the Exchange must similarly explain what it is trying to achieve with the Proposal. However, that is not the applicable standard.

As the Commission stated in the IEX Approval Order, the Commission considered whether the proposed rules were consistent with the Act and in particular Section 6 of the Act, and determined that IEX's proposed rules were "designed to operate in a manner that is consistent with the Act in that they are designed to protect investors and the public interest, are not designed to permit unfair discrimination, and would not impose any unnecessary or inappropriate burden on competition."[2] In making this determination, the Commission did not consider the information IEX includes in its most recent letter. Rather, the Commission considered whether the application of the speed bump was consistent with the Act. More specifically, the Commission made the following findings in approving IEX's speed bump:

1. Because IEX delays its proprietary market data uniformly to all IEX users, the Commission found that the application of IEX's added delay to outbound data is not

[1] See Letter from John Ramsay, Chief Market Policy Officer, IEX, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated April 21, 2017 ("IEX Letter 2").

[2] See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41155 (June 23, 2016) ("IEX Approval Order").

unfairly discriminatory.[3]

2. The Commission found that the application of IEX's added delay to inbound order messages is not unfairly discriminatory and does not impose an unnecessary or inappropriate burden on competition. More specifically, the Commission stated that it did not believe that the advantage that IEX provided to its pegged orders was unfairly discriminatory or impose an unnecessary or inappropriate burden on competition.[4]

3. Because IEX would apply the added delay to all IEX users equally and the delay may not be bypassed for a fee or otherwise, the Commission concluded that IEX's speed bump is designed to protect investors and the public interest in a manner that is not unfairly discriminatory and that does not impose an unnecessary or inappropriate burden on competition.[5]

4. In determining that IEX's quotes were eligible to be considered protected quotations, the Commission considered the length of the delay in connection with the Commission's Rule 611 Interpretation[6] and found that because IEX's speed bump is "well within geographic latencies geographic and technological latencies experienced today that do not impair fair and efficient access to an exchange's quotations or otherwise frustrate the objectives of Rule 611," the IEX speed bump would not "frustrate the purposes of Rule 611 by impairing fair and efficient access to IEX's quotations."[7]

The factors that the Commission considered in determining that the IEX speed bump was consistent with the Act informs what the Exchange believes the Commission will consider in determining whether the Proposal is consistent with the Act.

In addition to the reasons specified in the Proposal and the Exchange's first response to comment letters, the Exchange believes that because its proposed application of the Delay Mechanism to outbound market data would be applied uniformly to all Exchange data recipients, this aspect of the Proposal would not be unfairly discriminatory. Likewise, because the Exchange's proposed application of the Delay Mechanism to inbound order messages would be applied uniformly to displayed orders and would allow undisplayed orders to meet their order instruction to be dynamically updated to prices based on the PBBO, the Exchange believes that this aspect of the proposal would not be unfairly discriminatory or impose an unnecessary or inappropriate burden on competition. Moreover, because the Exchange's proposed Delay Mechanism would be applied equally to all Exchange members and may not be bypassed by fee or otherwise, the Exchange believes that the Proposal is designed to protect investors and the public interest in a manner that is not unfairly discriminatory and does not impose an unnecessary or inappropriate burden on competition.

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[3] Id.

[4] Id.

[5] Id. at 41157.

[6] 17 CFR 242.611 and Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016) (File No. S7-03-16) ("Rule 611 Interpretation").

[7] IEX Approval Order, supra note 2 at 41162.

In addition, with respect to whether the Exchange's quotation would be an "automated quotation" that is immediately accessible (as defined in Rule 600(b)(3)), the Exchange believes that the proposed length of the added delay of 350 microseconds would be "well within the geographic and technological latencies experienced by market participants when routing orders" and "would not impair a market participant's ability to access a displayed quotation consistent with the goals of Rule 611."[8] As such, the Exchange believes that the Proposal is consistent with Commission's interpretation of Rule 611 because the length of the delay would be *de minimis* and would not impair a market participant's ability to access the Exchange's displayed quotations.

Sincerely,

Elizabeth K. King

cc: Hon. Michael Piwowar, Acting Chairman
Hon. Kara Stein, Commissioner
Heather Seidel, Acting Director of Trading and Markets
David Shillman, Associate Director of Trading and Markets

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8 See Rule 611 Interpretation, supra note 6 at 40792.