SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77406; File No. 10-222)

March 18, 2016

Investors' Exchange LLC; Notice of Filing of Amendment Nos. 2, 3, and 4 to, and Order Instituting Proceedings to Determine Whether to Grant or Deny, and Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Grant or Deny, an Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto

I. Introduction

On August 21, 2015, Investors' Exchange LLC ("IEX" or "IEX Exchange") submitted to the Securities and Exchange Commission ("Commission") a Form 1 application ("Form 1"), seeking registration as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 ("Act").[1] IEX amended its Form 1 four times, including its most recent amendment on March 7, 2016. The Commission is required to review the exchange registration application, as amended, together with all comments received, and make a determination whether to grant the registration.[2]

On September 9, 2015, IEX submitted Amendment No. 1 to its Form 1.[3] Notice of the application, as amended, was published for comment in the Federal Register on September 22,

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1 15 U.S.C. 78f.

2 See 15 U.S.C. 78f and 15 U.S.C. 78s.

3 In Amendment No. 1, IEX submitted updated portions of its Form 1, including revised exhibits, a revised version of the proposed IEX Rule Book, and revised Addenda C-2, C-3, C-4, D-1, D-2, F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-10, F-11, F-12, and F-13.

2015.[4] IEX submitted several responses to comments.[5] On December 18, 2015, IEX consented to an extension of time to March 21, 2016 for Commission consideration of its Form 1.[6] IEX submitted a second amendment to its Form 1 on February 29, 2016 that proposes to make functional changes to its outbound router, which had been the subject of extensive public comment as originally proposed.[7] IEX submitted a third amendment to its Form 1 on March 4, 2016.[8] IEX submitted a fourth amendment to its Form 1 on March 7, 2016.[9]

Section 19(a)(1) of the Act[10] requires the Commission, within ninety days of the date of publication of notice of an application for registration as a national securities exchange, or such

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4 See Securities Exchange Act Release No. 75925 (September 15, 2015), 80 FR 57261 ("Notice").

5 See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated November 13, 2015 ("IEX First Response"); Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated November 23, 2015 ("IEX Second Response"); Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 9, 2016 ("IEX Third Response"); Letter from Donald Bollerman, Head of Markets and Sales, IEX Group, Inc., to File No. 10-222, dated February 16, 2016 ("IEX Fourth Response"); and Letter from IEX Group, Inc., to File No. 10-222, dated February 19, 2016 ("IEX Fifth Response").

6 See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated December 18, 2015.

7 In Amendment No. 2, IEX proposed changes to its Form 1 to, among other things, redesign its outbound routing functionality to direct routable orders first to the IEX routing logic instead of directly to the IEX matching engine. See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 1. In this manner, the IEX router would "interact with the IEX matching system over a 350 microsecond speed-bump in the same way an independent third party broker would be subject to a speed bump." Id.

8 In Amendment No. 3, IEX proposed changes to its Form 1 to clarify and correct revisions to its rulebook that it made in Amendment No. 2. See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated March 4, 2016.

9 In Amendment No. 4, IEX proposed changes to its Form 1 to update Exhibit E to reflect changes it proposed in Amendment No. 2. See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated March 7, 2016.

10 15 U.S.C. 78s(a)(1).

longer period as to which the applicant consents,[11] to, by order, grant such registration[12] or institute proceedings to determine whether such registration should be denied.[13] This order is providing public notice of the significant changes in Amendment Nos. 2, 3, and 4 to IEX's Form 1 and soliciting comment on the Form 1 as amended, while simultaneously instituting proceedings under Section 19(a)(1)(B) of the Act[14] to determine whether to grant or deny IEX's exchange registration application, as amended.

Section 19(a)(1)(B) of the Act[15] further provides that such proceedings shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the registration application. Under Section 19(a)(1)(B), the Commission may, however, extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding. As discussed below, the Commission believes that there is good cause for a ninety-day extension of these proceedings, and is therefore designating June 18, 2016 as the date by which the Commission shall determine whether to grant or deny IEX's Form 1 for registration as a national securities exchange.

The Commission received over 430 comment letters on IEX's Form 1, many focused on IEX's proposed trading rules and system.[16] Many commenters supported IEX's application.[17]

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11 See supra note 6 and accompanying text (noting that IEX provided the Commission with an extension of time until March 21, 2016).

12 15 U.S.C. 78s(a)(1)(A).

13 15 U.S.C. 78s(a)(1)(B).

14 15 U.S.C. 78s(a)(1)(B).

15 15 U.S.C. 78s(a)(1)(B).

16 The public comment file for IEX's Form 1 (File No. 10-222) is available on the Commission's website at: http://www.sec.gov/comments/10-222/10-222.shtml.

17 See, e.g., Verret Letter; Shatto Letters 1, 2, and 3; Simonelis Letter; Leuchtkafer First Letter; Leuchtkafer Second Letter; Capital Group Letter; Southeastern Letter; Navari

Other commenters either opposed IEX's application or questioned whether certain proposed elements of IEX's trading system would be consistent with the requirements of the Act applicable to a registered national securities exchange.[18]

Among the commenters who supported IEX's exchange registration, several argued that IEX would offer a market solution to address certain market inefficiencies and conflicts of interest in a manner that may protect the interests of buy-side investors.[19] In particular, some commenters noted IEX's decision not to pursue "maker-taker" pricing and instead offer flat

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First Letter; Navari Second Letter; DV Advisors Letter; Cowen Letter; Themis First Letter; Themis Second Letter; Oppenheimer Funds Letter; Murphy Letter; Birch Bay Letter; Healthy Markets Letter; Keblish Letter; Bowcott Letter; Secrist Letter; Stevens Letter; Oltean Letter; Park Letter; Crespo Letter; Hovanec Letter; Meskill Letter; Brian S. Letter; Glennon Letter; Shaw Letter; Upson Letter; Goldman Sachs Letter; Robeson Letter; Lynch Letter; Budish Letter; Chen & Foley Letter; Liquidnet Letter; T. Rowe Price Letter.

18 See, e.g., BATS First Letter; BATS Second Letter; NYSE First Letter; NASDAQ First Letter; NASDAQ Second Letter; Citadel First Letter; Citadel Second Letter; Citadel Third Letter; Citadel Fourth Letter; FIA First Letter; Hudson River Trading First Letter; Hudson River Trading Second Letter; Anonymous First Letter; Hunsacker Letter; Modern Markets Initiative Letter; Tabb Letter; Weldon Letter; Markit First Letter; Markit Second Letter; Direct Match Letter; Duffy Letter; Scott Letter.

19 See, e.g., Capital Group Letter at 1 (noting the "technologies and practices to discourage predatory behavior" including the "350 microsecond buffer," the lack of maker-taker pricing, and "simple order types"); Southeastern Letter (submitted on behalf of a group of undersigned asset managers) (complimenting IEX's proposed benefits to investors in "reducing structural inefficiencies in the market, and offering a more balanced and simplified market design"); Navari First Letter at 1 (noting certain features that "have great promise for the [r]etail [i]nvestor"); DV Advisors Letter; Cowen Letter; Themis First Letter (noting that IEX's "unconflicted investor-friendly alternative" will "employ technology designed to even playing fields, rather than exploit information asymmetry," that IEX will be "a stark alternative to other stock exchange models that seem to be more focused on selling speed and data," and that as an alternative trading system, IEX allowed it and its customers "to achieve best execution"); Oppenheimer Funds Letter; Murphy Letter (arguing that IEX's design should "help to limit and even eliminate the electronic front running that is central to the problems in the market today"); Keblish Letter; Secrist Letter; Stevens Letter; Oltean Letter; Meskill Letter; fi360 Letter; TRS Letter; Lynch Letter; Jefferies Letter; T. Rowe Price Letter; Liquidnet Letter.

transaction fees.[20] Some commenters praised IEX for offering fewer order types.[21] Several commenters highlighted IEX's "coil" delay (frequently referred to as IEX's "speed bump"), discussed in detail below, and asserted that it may help counter latency arbitrage.[22] Some commenters questioned the motive of certain commenters who opposed the proposal.[23] In addition, one commenter argued that the coil delay should not be grounds for denying IEX's exchange application, and suggested that IEX be phased into the national market system under a

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20 See, e.g., Capital Group Letter; Southeastern Letter; Navari First Letter; Navari Second Letter; Themis Letter 1; Oppenheimer Funds Letter; Healthy Markets Letter; Abel/Noser Letter; Goldman Sachs Letter; Liquidnet Letter; Franklin Templeton Investments Letter; TRS Letter. The Commission notes, however, that fees are not actually part of IEX's Form 1. Rather, if IEX were to be approved as an exchange, it would need to submit separate filings under Section 19(b) of the Act to establish fees that it would charge to members and others using its facilities. Nevertheless, in its Second Response Letter, IEX noted that, as an exchange, it would intend to charge a flat transaction fee. See IEX Second Response at 9.

21 See, e.g., Capital Group Letter; Southeastern Letter; Shatto First Letter; Navari First Letter; Oppenheimer Funds Letter; Healthy Markets Letter; Norges Bank Letter; Burgess Letter; fi360 Letter; TRS Letter. But see NYSE First Letter at 9 (arguing that IEX's proposed menu of order types is not necessarily "simple" and the potential different combinations of instructions for limit orders is in the hundreds).

22 See, e.g., T. Rowe Price Letter at 1-2; Navari Second Letter; Healthy Markets Letter at 2-4; Jefferies Letter at 3; Chen & Foley Letter at 2-3; Leuchtkafer Second Letter at 9; Budish Letter at 4. See also Burgess Letter; Capital Group Letter; Franklin Templeton Investments Letter; Michael Schroeder Letter; Leeson Letter; Lupinski Letter; Oorjitham Letter; Eric K Letter; Grey Letter; Spear Letter; Baggins Letter; Nixon Letter; Campbell Letter; Moses Letter; Huff Letter; Kaye Letter; Jean Letter; Gloy Letter; Givehchi Letter; Kara Letter; Hiester Letter; Benites Letter; Eustace Letter; Ramirez Letter; Luce Letter; Arnold Letter; Tidwell Letter; Doyle Letter; Long Letter; Kim Letter; Mannheim Letter; Oppenheimer Funds Letter.

23 See, e.g., Verret Letter at 2 (arguing that "incumbent firms have long sought to utilize regulatory barriers to entry to minimize competition, and it would appear a number of firms are presently using the regulatory comment process regarding IEX's application as a venue to replicate that strategy here"); Crespo Letter; Brian S. Letter.

pilot program so that the effect of IEX's access delay on the wider market could be better assessed.[24]

Among the commenters who were critical of aspects of IEX's proposal, most focused on issues surrounding IEX's coil delay, IEX's affiliated outbound router and what they viewed as an unfair advantage to bypass the outbound coil delay, and IEX's proposed order types.[25] Other commenters did not express a view on whether the Commission should grant or deny IEX's application.[26]

II. Description of IEX's Trading System

IEX, which currently operates a trading platform as an alternative trading system ("ATS"), is seeking to register as a national securities exchange. Below is a brief description of the proposed IEX exchange trading platform, including the new aspects of the system concerning the router functionality where noted.[27]

Order Execution. Non-marketable orders submitted to IEX would be displayed or non-displayed, depending on the instructions indicated by the IEX member submitting the order.[28]

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24 See Angel Letter at 3-5. The pilot program suggested by this commenter would be to measure the effect on the market of protecting IEX's quotation notwithstanding the "speed bump." See id. at 4-5. According to the commenter, if the pilot caused material harm, it could be halted, in which case IEX could still operate as an exchange but without having its quotes protected under Regulation NMS. See id. at 5. See also Wolfe Letter at 3 (agreeing with the pilot approach suggested in the Angel Letter).

25 See, e.g., NYSE First Letter; NASDAQ First Letter; BATS First Letter; Citadel First Letter; Citadel Second Letter; Citadel Third Letter; Hudson River Trading First Letter; Hudson River Trading Second Letter; FIA First Letter.

26 See, e.g., Virtu Letter; Healthy Markets Letter; Tabb Letter; Aesthetic Integration Letter.

27 For more detail on IEX's proposed trading system, see IEX's Form 1 and Exhibits, as amended (in particular Exhibits B (the proposed rulebook) and E (a narrative description of the proposed operation of IEX as an exchange)), which are available on the Commission's website at http://www.sec.gov/rules/other/otherarchive/other2015.shtml.

28 See Proposed IEX Rule 11.220(a)(1).

IEX would direct an order (or any portion thereof) that it could not execute on IEX to away markets for execution through IEX Services LLC ("IEXS"), IEX's wholly owned single-purpose outbound router, unless the terms of the order direct IEX not to route such order away.[29]

IEX proposed several pegged order types – primary peg, midpoint peg, and discretionary peg – all of which would be non-displayed with prices that are automatically adjusted by the IEX system in response to changes in the national best bid and offer ("NBBO") (subject to a limit price, if any).[30] As noted below, it is these types of dark pegged orders – and not standard market or limit orders, or displayed quotes or orders – that would be affected by the proposed coil delay.

Access and the Coil Delay. Only broker-dealer members of IEX and entities that enter into market access arrangements with members (collectively, "Users") would have access to the IEX system.[31] Users would connect to IEX through a single Point-of-Presence ("POP") located in Secaucus, New Jersey.[32] After entering through the POP, a User's electronic message sent to the IEX trading system would traverse the IEX "coil," which is a box of compactly coiled optical fiber cable equivalent to a prescribed physical distance of 61,625 meters (approximately 38 miles).[33] After exiting the coil, the User's message would travel an additional physical distance to the IEX trading system, located in Weehawken, New Jersey.[34] According to IEX, the coil, when combined with the physical distance between the POP and the IEX trading system

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29 See Proposed IEX Rule 11.230(b). See also Amendment Nos. 2 and 3.

30 See Proposed IEX Rule 11.190(a)-(b).

31 To obtain authorized access to the IEX System, each User must enter into a User Agreement with IEX. See Proposed IEX Rule 11.130(a).

32 See IEX Second Response at 2.

33 See IEX First Response at 3.

34 See Exhibit E to IEX's Form 1 submission, at 12. See also IEX First Response at 3.

(hereinafter the "POP/coil"), provides IEX Users sending non-routable orders to IEX with 350 microseconds[35] of one-way latency (hereinafter the "POP/coil delay").[36]

Several commenters expressed concern that IEX's previously-published Form 1 lacked specific detail about how the POP/coil structure would work, including what messages and activity would – and would not – be subject to the delay.[37] IEX responded by supplementing the record through its first two response letters.[38] Most recently, IEX proposed a new approach to outbound routing, which is discussed further below.

According to IEX, all incoming messages (e.g., orders to buy or sell and any modification to a previously sent open order) from any User would traverse the POP/coil to initially reach IEX. In addition, all outbound messages from IEX back to a User (e.g., confirmations of an execution that occurred on IEX) would pass through the same route in reverse.[39] IEX's direct proprietary market data feed, which is an optional data feed that IEX would make available to subscribers, also would traverse the POP/coil.[40]

As originally proposed, one type of inbound message and two types of outbound messages would not traverse the POP/coil, specifically:

1. Inbound market data from other trading centers to the IEX system would not traverse the POP/coil;

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35 A microsecond is one millionth of a second.

36 See IEX First Response at 3. See also Amendment Nos. 2 and 3.

37 See, e.g., NYSE First Letter and Nasdaq First Letter.

38 See IEX First Response and IEX Second Response.

39 See IEX First Response at 3.

40 See id.

2. Orders routed outbound from IEX through IEXS to away trading centers for execution (as well as reports back to IEX from those away trading centers) would not traverse the POP/coil (though execution and transaction reports sent from IEX back to Users would traverse the POP/coil and thus would be delayed) (as discussed below, IEX recently proposed a materially different approach to outbound routing that it intends will eliminate any exclusive advantages provided to its routing functionality); and
3. Outbound transaction and quote messages sent from IEX to the applicable securities information processor ("SIP") would not pass through the POP/coil, but instead would be sent directly from the IEX system to the SIP processor.[41]

Finally, updates to resting pegged orders on IEX would be processed within the IEX trading system and would not require that separate messages be transmitted from outside the trading system, which would otherwise traverse the POP/coil, for each update.[42]

According to IEX, its POP/coil delay, including its application to some but not all of the message traffic into and out of its trading system, was originally designed to achieve two main purposes: (1) to allow IEX time to update the prices of resting dark pegged orders on its book (whose permissible execution prices are not static, but rather are tied to the NBBO as IEX sees it through the proprietary data feeds it purchases from each exchange) in response to changes in market prices before other market participants can access IEX's resting pegged orders at potentially "stale" prices (i.e., pegged order prices that had not been updated by IEX when the

41 See id. at 3-4.

42 See id.

new incoming order arrived at IEX);[43] and (2) to delay the trade acknowledgements IEX sends to Users, as well as to delay its proprietary outbound data feed that reflects the occurrence of an execution on IEX, both of which originally provided IEX's affiliated outbound router with a "head start" as it routes out to access trading interest posted on other exchanges before other market participants learn about a trade on IEX and can trade with or re-price that away interest in reaction to the execution that occurred on IEX.[44]

Outbound Routing. In the three recent amendments to its Form 1, IEX, among other things, proposed a significantly different approach to outbound routing.[45] Rather than initially

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43 See id. at 4 (explaining that the POP/coil is designed "to ensure that no market participants can take action on IEX in reaction to changes in market prices before IEX is aware of the same price changes on behalf of all IEX members"). See also Hudson River Trading First Letter at 3 (discussing the purposes of the POP/coil delay). One commenter noted that the POP/coil delay "has no impact" on regular displayed orders, and "simply slows down the trade execution process but does not alter the outcome" for non-pegged orders. Id. at 2-3 ("Similar to a 100-meter sprint, if you simply add 350 microseconds to each participant's time, neither the order in which they finish nor their time differentials will change."). Rather, the commenter argued that "IEX delays all transparent displayed orders that are critical to price discovery without altering the outcomes of those orders… for the benefit of hidden, pegged orders that free-ride on price discovery." See Hudson River Trading Second Letter at 4.

44 See IEX Second Response at 14 ("…the purpose of requiring outbound execution messages to go through the POP (350 microseconds) is to prevent 'information leakage' or 'liquidity fade' when IEXS routes to other markets").

45 The proposed revisions to accommodate the new routing process are primarily addressed in proposed IEX Rule 11.510 (Connectivity), as well as in proposed IEX Rules 2.220 (IEX Services LLC as Outbound Router), 11.130 (Access), 11.230(b)-(c) (Order Execution), 11.240 (Trade Execution, Reporting, and Dissemination of Quotations), 11.330 (Data Products), and 11.410 (Use of Market Data Feeds and Calculations of Necessary Price Reference Points). IEX also proposed other changes in Amendment Nos. 2 and 3, including changes to proposed Rule 2.160 (Restrictions on Membership) to reflect the Series 57 exam; proposed new Rule 2.250 (Mandatory Participation in Testing of Backup Systems); proposed new Rule 9.217 (Expedited Client Suspension Proceeding); proposed new Rule 10.270 (Disruptive Quoting and Trading Activity Prohibited); changes to proposed Rule 11.190(a)(3) (Pegged Orders), (b)(8)-(10) (concerning pegged orders), and (g) (concerning quote stability for Discretionary Peg Orders); and changes to proposed Rule 11.260 (LIMITATION OF LIABILITY).

directing the entirety of a User's order to the IEX matching engine and then routing away any excess shares via IEXS directly (and without having to first pass through the POP/coil delay as it routes shares outbound), IEX proposed to eliminate this aspect and instead create a new structure intended to place its outbound routing function on parity with competing broker-dealers. IEX's latest amendments, which constitute a significant change from its initial Form 1, are discussed further below.

III. Proceedings to Determine Whether to Grant or Deny the Application and Grounds for Potential Denial Under Consideration

The Commission is hereby instituting proceedings pursuant to Section 19(a)(1)(B) of the Act[46] to determine whether IEX's Form 1, as amended, should be granted or denied. Institution of such proceedings is appropriate at this time in view of the issues raised by the application, the significant changes proposed in IEX's recent amendments, and the need for the Commission to provide the public with an opportunity to comment and allow the Commission to consider comments received on the recently filed features of the IEX market. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. In fact, the Commission is providing the public with an opportunity to comment to inform its consideration and decision making regarding the Form 1, as IEX recently amended it. The Commission encourages interested persons to provide specific comment on the Form 1 focused on Amendment Nos. 2, 3, and 4.[47]

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46 15 U.S.C. 78s(a)(1)(B).

47 See infra Section IV (Extension of Time for Proceedings). Separately, the Commission is evaluating whether to revisit its interpretation of automated quotation under Regulation NMS in light of comments received on IEX's Form 1 concerning the consistency of the POP/coil delay with Regulation NMS.

As required by Section 19(a)(1)(B) of the Act,[48] the Commission is hereby providing notice of the grounds for potential denial under consideration. Under Sections 6(b) and 19(a)(1) of the Act,[49] the Commission shall grant an application for registration as a national securities exchange if the Commission finds that the requirements of the Act and the rules and regulations thereunder with respect to the applicant are satisfied; the Commission shall deny such application for registration if it does not make such a finding. In particular, Section 6(b)(5) of the Act[50] provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange are designed, among other things, not to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, Section 6(b)(8) of the Act[51] provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Act.

The Commission is particularly interested in commenters' views as to whether the changes set forth in IEX's Form 1, as amended, are consistent with the Act, in light of commenters' concerns that IEX's routing functionality and IEXS would have an advantage over other routing broker-dealers that would be unfairly discriminatory and an inappropriate burden on competition.[52] IEX has represented to the Commission that, under its revised outbound

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48 15 U.S.C. 78s(a)(1)(B).

49 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a)(1), respectively.

50 15 U.S.C. 78f(b)(5).

51 15 U.S.C. 78f(b)(8).

52 Several commenters criticized the fact that IEXS would have received routing information from the IEX system outside of, and not subject to, the POP/coil delay while other IEX members' receipt of transaction and quotation information from the IEX

routing structure, IEX's routing functionality would interface with the IEX matching engine on the same terms as other Users, including routing broker-dealer members of IEX.[53]

The proposed new outbound routing structure, which IEX filed with the Commission over a period ending in early March, represents a material departure from the original design that IEX proposed in its original Form 1 and therefore warrants further review and consideration by the Commission, as informed by further public comment.[54] IEX has proposed a number of changes to its rulebook to effectuate this new design. The Commission believes that the protection of investors and the public interest are best served by affording the public the

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system would have been subject to the POP/coil delay. See, e.g., BATS First Letter at 4-5; BATS Second Letter at 3-6; BATS Third Letter at 3; NYSE First Letter at 3-5; NYSE Second Letter at 3; Citadel First Letter at 6-7; Citadel Second Letter at 5-6; Citadel Third Letter at 1-2; FIA First Letter at 4-5; Tabb Letter at 2-3; Hudson River Trading First Letter at 3-7; Hudson River Trading Second Letter at 2-5; Markit First Letter at 1-3; Markit Second Letter at 3-4 and 6; Hunsacker Letter; Weldon Letter. In other words, the concern expressed was that IEXS would have been able to route to away markets the unexecuted portion of any marketable order not fully executed at IEX 350 microseconds before other routing broker-dealers learned that an execution occurred on IEX. Some commenters argued that this arrangement would provide an unfair competitive advantage to IEX and the routing broker that it owns in that IEXS would have faster access to information from the IEX trading system than other members of IEX, including those who offer routing services that compete with IEXS, and thus IEXS would have the unique ability over other routing brokers to most quickly and efficiently route to away markets. See, e.g., BATS First Letter at 4-5; BATS Second Letter at 3-6; BATS Third Letter at 3; NYSE First Letter at 3-5; NYSE Second Letter at 3; Citadel First Letter at 6-7; Citadel Second Letter at 5-6; Citadel Third Letter at 1-2; FIA First Letter at 4-5; Tabb Letter at 2-3; Hudson River Trading First Letter at 3-7; Hudson River Trading Second Letter at 4-5; Markit First Letter at 1-3; Markit Second Letter at 3-4 and 6; Weldon Letter. Other commenters opined that the advantage provided to IEXS would effectively force brokers to use IEXS because other third party routing brokers would be competitively disadvantaged by their inability to similarly bypass the POP/coil delay. See, e.g., Tabb Letter at 2; Citadel Third Letter at 3.

53 See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016.

54 In particular, the recently-filed amendments to IEX's Form 1 introduce the concept of a new POP/coil delay between IEX's routing logic (which is located within IEX's system) and IEX's book.

opportunity to review and comment on this modified proposal from IEX, particularly in light of the large number of comments the Commission received that raised questions about whether IEX's proposed rules were consistent with the requirements of the Act. By publishing notice of, and soliciting comment on, IEX's Form 1, as most recently amended by Amendment Nos. 2, 3, and 4, and simultaneously instituting proceedings, the Commission seeks public input on whether IEX's proposed new outbound routing structure, as reflected in its new proposed amended rules, is consistent with the Act, and accordingly, whether IEX should be registered as a national securities exchange.

The Commission previously has stated that an exchange-affiliated outbound router, as a "facility" of the exchange, will be subject to the exchange's and the Commission's regulatory oversight, and that the exchange will be responsible for ensuring that the affiliated outbound routing function is operated consistent with Section 6 of the Act and the exchange's rules.[55] For example, in approving an exchange with an affiliated outbound routing broker, the Commission previously noted that "[a] conflict of interest would arise if the national securities exchange (or an affiliate) provided advantages to its broker-dealer that are not available to other members."[56] The Commission further explained that "advantages, such as greater access to information,

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55 See, e.g., Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (August 19, 2010) (granting BATS Y Exchange's request to register as a national securities exchange).

56 Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225, 55233 (November 1, 2001) (PCX-00-25) (order approving Archipelago Exchange ("ArcaEx") as the equities trading facility of PCX Equities, Inc.) ("ArcaEx Order"). In the 2001 PCX filing, two commenters expressed concerns regarding ArcaEx's affiliation with the Wave broker-dealer, which operated as the outbound routing broker-dealer for ArcaEx. Specifically, these commenters were concerned that the affiliation between ArcaEx and Wave would be anti-competitive and could create a conflict of interest. See also supra note 55, at 51304 (citing to the BATS Y order).

improved speed of execution, or enhanced operational capabilities in dealing with the exchange, might constitute unfair discrimination under the Act."[57]

As specified in IEX's initial Form 1, unexecuted shares of routable orders sent to IEXS would not have traversed the POP/coil. As revised by Amendment Nos. 2, 3, and 4, IEX now proposes a significantly different structure that it says is intended to place its router and routing logic in an identical position to non-affiliated routing broker-dealers.[58]

IEX's recent amendments include new rules to bifurcate its handling of non-routable and routable orders.[59] For routable orders, IEX explains that it would insert an additional POP/coil delay within the IEX system to delay routable orders' access to the IEX book by an additional 350 microseconds after they have already passed through the initial POP/coil delay on their way into the IEX system (for a total delay of 700 microseconds before any portion of the routable order reaches the IEX book).[60] IEX represents that this new delay is intended to place IEX in the same position as a third-party routing broker in reaching IEX's book through a POP/coil delay, such that IEX's ability to submit a routable order to its own order book would be identical to any other routing broker-dealer's ability to submit a routable order to the IEX order book despite the fact that the orders would traverse different paths in the system.[61] Likewise, IEX notes that

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57 ArcaEx Order, supra note 56, at 55233.

58 See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 1.

59 See id.

60 See id. at 1-2 ("Please note that because of the speed bump introduced between the IEX Router and the IEX matching engine, IEX routing members independently choosing to use the IEX Router will experience an additional 350 microseconds of latency as compared to members sending non-routable orders to the IEX matching engine.").

61 See id. at 1 ("In particular, this redesign eliminates any alleged advantage claimed by the commenters that the Router has over a third party broker routing to IEX.").

messages from the IEX order book back to IEX's routing logic also would be subject to this POP/coil delay to effect a latency identical to that experienced by IEX's non-affiliated members when receiving messages back from the IEX order book.[62] As such, IEX represents that its routing functionality would have no information advantage (i.e., no special view of IEX's book, including displayed or non-displayed interest) and IEX represents that the proposal places its outbound routing functionality in an identical position to third-party routing broker-dealers when sending orders into the IEX matching engine and when receiving transaction information from the IEX matching engine.[63]

Given this additional POP/coil delay, Users submitting routable orders to IEX and Users submitting non-routable orders to IEX would not be subject to the same cumulative POP/coil delay. Non-routable orders would remain subject to the 350 microsecond delay into and out of the IEX matching engine via the initial POP/coil. Routable orders, however, would be sent to IEX's system routing logic first, and, if routed to IEX, would traverse a new POP/coil delay (with an additional 350 microsecond delay) when interacting with the IEX matching engine.[64]

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62 See id. at 1-2 (noting that "the IEX Router would receive fill information from the IEX matching engine by way of the speed bump, which would place the IEX Router's ability to receive information from the IEX matching engine on equal terms to an independent broker router").

63 See id. at 2 (noting that "the IEX Router would receive IEX quote information (the IEX TOPS feed) over the speed bump, which would place the IEX Router's ability to receive IEX quote information on equal terms to an independent broker router").

64 See id. IEX believes that this additional delay should not be to the detriment of a User submitting a routable order, and notes that Users may avoid this additional delay by submitting non-routable orders. See id. In addition, the trade confirmation report from the IEX matching engine back to the User that submitted the routable order would be subject to a 700 microsecond delay, whereas IEX's proprietary data feed would only be subject to a 350 microsecond delay. See id. at 1-2.

The Commission is evaluating whether IEX's revised proposal for handling routable orders sufficiently addresses concerns that its proposed rules may not be consistent with the Act, for example whether they constitute unfair discrimination, or impose an unnecessary or inappropriate burden on competition.

Accordingly, the Commission believes that it is appropriate at this time to institute proceedings to determine whether to grant or deny IEX's Form 1, as modified by IEX's recent amendments. For the reasons set forth above, the Commission believes that questions remain as to whether IEX's proposed trading system is consistent with the requirements of: (1) Section 6(b)(5) of the Act,[65] which provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange are designed, among other things, not to permit unfair discrimination between customers, issuers, brokers, or dealers; and (2) Section 6(b)(8) of the Act,[66] which provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Act.[67]

The Commission invites comment on all aspects of IEX's Form 1, as amended, particularly with regard to the proposed outbound routing functionality as presented in its recent

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65 15 U.S.C. 78f(b)(5).

66 15 U.S.C. 78f(b)(8).

67 Commenters also raised concerns about whether IEX's quotation, in light of the POP/coil delay, could be categorized as "automated," and therefore be "protected," under Rule 611 of Regulation NMS given prior Commission guidance on those definitions when it adopted Regulation NMS. See, e.g., FIA First Letter; NYSE First Letter; Citadel First Letter. The Commission is separately evaluating the definition of automated quotation under Regulation NMS in light of comments received on IEX's Form 1 concerning the consistency of the POP/coil delay with Regulation NMS.

amendments. In particular, do commenters have a view on whether IEX's revised proposal places other routing brokers who are members of IEX on the same footing as IEX in a manner that would address the concerns under the Act and the rules thereunder? Are there material aspects of IEX's proposed revised routing functionality that are not clearly presented in IEX's revised rules[68] and addressed by IEX's Form 1, as amended? Do commenters have a view on whether the different delays in accessing the IEX matching engine experienced by routable orders versus non-routable orders present any concerns under the Act?

IV. Extension of Time for Proceedings

As noted above, IEX previously consented to an extension of time for its Form 1 to March 21, 2016.[69] Most recently, on February 29, March 4, and March 7, IEX filed amendments to its Form 1.[70] As discussed above, these amendments contained, among other unrelated changes, several new and amended rules to effect a significantly different approach to outbound routing. IEX stated its belief that its new routing proposal addresses concerns raised by commenters about its outbound routing functionality and whether that original proposal was consistent with the Act.[71] For the reasons discussed above, the Commission believes it is necessary to provide a notice and comment period so that market participants can evaluate the new proposal and amended rule text.

IEX filed these amendments to its Form 1 approximately two weeks prior to the March 21 deadline. The Commission does not have sufficient time before that March 21 deadline to

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68 See supra note 45 (citing to the proposed amended IEX rules that would accommodate the new routing process, including proposed IEX Rule 11.510).

69 See supra note 6.

70 See supra notes 7-9.

71 See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 2.

publish notice of IEX's amendments in the Federal Register, afford market participants a 21-day comment period, and then evaluate any comments received before making a final determination on IEX's Form 1, as amended. Therefore, to provide time for public notice and comment and for Commission consideration of this significant new proposal from IEX, the Commission believes that there is good cause for a ninety-day extension of these proceedings. Accordingly, the Commission hereby designates June 18, 2016 as the date by which the Commission shall determine whether to grant or deny IEX's Form 1, as amended, for registration as a national securities exchange.

V. Request for Written Comments

The Commission requests that interested persons provide written views and data with respect to IEX's Form 1, as amended, and the questions included above or other relevant issues. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 10-222 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 10-222. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/other.shtml). Copies of the

submission, all subsequent amendments, all written statements with respect to IEX's Form 1 filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 10-222 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Brent J. Fields
Secretary