

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78101; File No. 10-222)

June 17, 2016

In the Matter of the Application of
Investors' Exchange, LLC
for Registration as a National Securities Exchange

Findings, Opinion, and Order of the Commission

I. Introduction and Procedural History

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") under the Securities Exchange Act of 1934 ("Act"), seeking registration as a national securities exchange pursuant to Section 6 of the Act.¹ IEX has amended its Form 1 five times, as detailed below. The Commission has reviewed the exchange registration application, as amended, together with all comments received, in order to 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 by Amendment No. 1, was published for comment in the Federal Register on September 22, 2015.⁴ On December 18, 2015, IEX consented to an extension of time to March 21, 2016 for Commission consideration of its Form 1 application and the

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, F-13.

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

comments received thereon.⁵ In response to comments, IEX submitted an amendment to its Form 1 on February 29, 2016 to propose a new approach to outbound routing, which had been the subject of extensive public comment as originally proposed.⁶ IEX submitted a third amendment to its Form 1 on March 4, 2016.⁷ IEX submitted a fourth amendment to its Form 1 on March 7, 2016.⁸ IEX submitted a fifth amendment to its Form 1 on May 27, 2016.⁹ All together, the Commission received 474 comments regarding the IEX Exchange Form 1.¹⁰ IEX submitted several responses to comments.¹¹

⁵ See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated December 18, 2015.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ In Amendment No. 5, IEX updated Exhibits J and K to reflect changes since its initial filing. See Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated May 27, 2016.

¹⁰ See Appendix A (listing comments received on this matter).

¹¹ 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”); Letter from IEX Group, Inc., to File No. 10-222, dated February 19, 2016 (“IEX Fifth Response”); and Letter from

On March 18, 2016, the Commission issued an order (“Order Instituting Proceedings” or “OIP”) that provided public notice of the significant changes IEX proposed to its application in Amendment Nos. 2, 3, and 4, and solicited comment on the amended Form 1, while simultaneously instituting proceedings under Section 19(a)(1)(B) of the Act¹² to determine whether to grant or deny IEX’s exchange registration application, as amended.¹³ By publishing notice of, and soliciting comment on, IEX’s Form 1, as amended by Amendment Nos. 2, 3, and 4, and simultaneously instituting proceedings, the Commission sought public input in particular on whether IEX’s proposed new outbound routing structure, as reflected by IEX’s Form 1 and rules as amended by Amendment Nos. 2, 3, and 4 is consistent with the Act, and accordingly, whether IEX should be registered as a national securities exchange.¹⁴ The Order Instituting Proceedings extended until June 18, 2016, the date by which the Commission shall grant or deny IEX’s Form 1, as amended, for registration as a national securities exchange. The Commission received additional comment on IEX’s amended Form 1 subsequent to the publication of the Order

Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016 (“IEX Sixth Response”).

¹² 15 U.S.C. 78s(a)(1)(B).

¹³ See Securities Exchange Act Release No. 77406, 81 FR 15765 (March 24, 2016) (File No. 10-222) (“Order Instituting Proceedings” or “OIP”). Also on March 18, 2016, the Commission separately issued a notice of a proposed Commission interpretation regarding automated quotations under Regulation NMS. See Securities Exchange Act Release No. 77407, 81 FR 15660 (March 24, 2016) (File No. S7-03-16) (“Notice of Proposed Interpretation”). Separately, today, the Commission has adopted a final interpretation. See Securities Exchange Act Release No. 78102 (June 17, 2016) (File No. S7-03-16) (“Final Interpretation”).

¹⁴ While IEX’s proposed outbound routing structure was one focus of the Commission’s solicitation of comment in the Order Instituting Proceedings, it is but one of several aspects of IEX’s Form 1 that the Commission must consider in determining whether to grant or deny IEX’s exchange registration application. All such aspects are discussed below.

Instituting Proceedings. A list of the comments received on IEX's Form 1 is set forth in Appendix A.

For the reasons set forth below, and based on the representations set forth in IEX's Form 1, as amended, as supplemented in IEX's responses to comments included in the public comment file, this order approves IEX's Form 1 application, as amended, for registration as a national securities exchange.

II. Statutory Standards

Pursuant to Sections 6(b) and 19(a) of the Act,¹⁵ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that IEX Exchange's application, as amended, for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of IEX Exchange are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) assure fair representation of the exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer;¹⁶ (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles

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

¹⁶ See 15 U.S.C. 78f(b)(3).

of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system;¹⁷ (3) not permit unfair discrimination between customers, issuers, or dealers;¹⁸ and (4) protect investors and the public interest.¹⁹ The Commission also finds that the rules of IEX Exchange are consistent with Section 11A of the Act.²⁰ Finally, the Commission finds that IEX Exchange's proposed rules at this time do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²¹

III. Discussion

A. Governance of IEX Exchange²²

IEX Group, Inc. ("IEXG"), a Delaware corporation, will own 100% of IEX Exchange as well as IEX Services LLC ("IEXS"), a registered broker-dealer that currently operates an alternative trading system ("IEX ATS"). Following the launch of operations of IEX Exchange, IEXS would be a facility of IEX Exchange and would provide outbound order routing services to IEX Exchange.²³

¹⁷ See 15 U.S.C. 78f(b)(5).

¹⁸ See id.

¹⁹ See id.

²⁰ 15 U.S.C. 78k-1.

²¹ 15 U.S.C. 78f(b)(8).

²² The Commission did not receive any comments addressing the substance of the governance provisions.

²³ See Form 1, Exhibit C. See also IEX Exchange Rule 2.220.

1. IEX Exchange Board of Directors

The board of directors of IEX Exchange (“Exchange Board”) will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of IEX Exchange as a self-regulatory organization (“SRO”).²⁴

Under the Amended and Restated Operating Agreement of Investors’ Exchange LLC (“IEX Exchange Operating Agreement”):²⁵

- The Exchange Board will initially be composed of seven directors;²⁶
- One director will be the Chief Executive Officer of IEX Exchange;²⁷
- The number of Non-Industry Directors,²⁸ including at least two Independent Directors,²⁹ will equal or exceed the sum of the number of Industry Directors³⁰ and Member Representative Directors;³¹

²⁴ See IEX Exchange Operating Agreement, Article III, Section 1.

²⁵ See Form 1, Exhibit A-3.

²⁶ See IEX Exchange Operating Agreement, Article III, Section 2(a).

²⁷ See IEX Exchange Operating Agreement, Article III, Section 2(b).

²⁸ “Non-Industry Director” means a Director who is an Independent Director or any other individual who would not be an Industry Director. See IEX Exchange Operating Agreement, Article I(x).

²⁹ “Independent Director” means a “Director who has no material relationship with the [IEX Exchange] or any affiliate of the [IEX Exchange], or any [IEX member] or any affiliate of any such [IEX member]; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the [IEX Exchange] or [IEXG].” See IEX Exchange Operating Agreement, Article I(n).

³⁰ Generally, an “Industry Director” is, among other things, a Director that is or has been within the prior three years an officer, director, employee, or owner of a broker or dealer, as well as any Director who has, or has had, a consulting or employment relationship with IEX Exchange or any affiliate of IEX Exchange within the prior three years. See IEX Exchange Operating Agreement Article I(p). This definition is consistent with what the Commission has approved for other exchanges. See, e.g., Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (“BATS Y

- At least twenty percent of the directors on the Exchange Board will be Member Representative Directors,³² and
- A majority of the Board of Directors will be Independent Directors.³³

In addition, during such time as IEX Exchange operates a listings business, the Exchange Board must have one Director who is an officer or director of an issuer and one Director who is a representative of investors, and in each case, such Director must not be associated with a member.³⁴

As discussed further below, the initial Directors of the Exchange Board shall be appointed by IEXG and shall serve until the first annual meeting of holders of LLC interests of Investors' Exchange LLC, of which IEX Group, Inc. is the sole holder ("LLC Member"). In its Form 1 application, IEX committed to hold its first annual meeting as a registered exchange within 90 days after the date of final action by the Commission on IEX's application for

Exchange Order"); and 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) ("MIAX Exchange Order").

³¹ See IEX Exchange Operating Agreement, Article III, Section 2(b). "Member Representative Director" means a Director who has been appointed by IEXG as an initial Director pursuant to Article III, Section 4(g) of the IEX Exchange Operating Agreement to serve until the first annual meeting or who has been "elected by the LLC Member after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to [the] Operating Agreement and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member." See IEX Exchange Operating Agreement, Article I(u). See also IEX Exchange Operating Agreement, Article III, Section 4(g).

³² See IEX Exchange Operating Agreement, Article III, Section 2(b).

³³ See id.

³⁴ See id.

registration as a national securities exchange (“Approval Date”).³⁵ At the first annual meeting of the LLC Member and each annual meeting thereafter, IEXG, as the sole LLC Member of IEX Exchange, will elect the Exchange Board pursuant to the IEX Exchange Operating Agreement and consistent with the compositional requirements specified therein.³⁶ In addition, IEXG will appoint the initial Nominating Committee³⁷ and Member Nominating Committee,³⁸ consistent with each committee’s compositional requirements,³⁹ to nominate candidates for election to the Exchange Board. Each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year’s Nominating Committee or Member Nominating Committee, as applicable, such candidates to be voted on by IEXG at the annual meeting of the LLC Member.⁴⁰ IEX Exchange members have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.⁴¹

³⁵ See IEX Exchange Operating Agreement, Article III, Section 4(g). See also discussion of “Interim Exchange Board” *infra*.

³⁶ See IEX Exchange Operating Agreement, Article IV, Section 1(a).

³⁷ The number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members. All Nominating Committee members must be Independent Directors. See IEX Exchange Operating Agreement Article VI, Section 2. See also IEX Exchange Operating Agreement Article V, Section 2(a).

³⁸ Each member of the Member Nominating Committee shall be a Member Representative member. See IEX Exchange Operating Agreement Article VI, Section 3. See also IEX Exchange Operating Agreement Article V, Section 2(a). Pursuant to IEX Exchange Operating Agreement Article I(v), a “Member Representative member” is a member of any committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.

³⁹ See IEX Exchange Operating Agreement Article VI, Section 1.

⁴⁰ See *id.*

⁴¹ See *id.* See also IEX Exchange Operating Agreement Article III, Section 4.

The Nominating Committee will nominate candidates for each director position, and IEXG, as the sole LLC Member, will elect those directors. For Member Representative Director positions, the Member Nominating Committee will solicit input from IEX members and members may submit petition candidates.⁴² If no candidates are nominated pursuant to a petition process, then the initial nominees submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee. If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to IEX Exchange members for election to determine the final nominees for any open Member Representative Director positions.⁴³ In the event of a contested election, the candidates who receive the most votes will be selected as the Member Representative Director nominees by the Nominating Committee.⁴⁴

Thereafter, the Member Nominating Committee will nominate a final slate of candidates to the Nominating Committee, and the Nominating Committee must accept those candidates and

⁴² See IEX Exchange Operating Agreement Article III, Section 4(c). The petition must be signed by executive representatives of 10% or more of the IEX Exchange members. No IEX Exchange member, together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate. See id.

⁴³ See IEX Exchange Operating Agreement, Article III, Section 4(e) and (f). Each IEX Exchange Member shall have the right to cast one vote for each available Member Representative Director nomination, provided that any such vote must be cast for a person on the List of Candidates and that no IEX Exchange member, together with its affiliates, may account for more than 20% of the votes cast for a candidate. See IEX Exchange Operating Agreement, Article III, Section 4(f).

⁴⁴ See IEX Exchange Operating Agreement, Article III, Section 4(f).

submit them to the LLC Member.⁴⁵ IEXG, as the sole LLC Member, is obligated to elect the Member Representative Director nominees that are nominated by the Nominating Committee.⁴⁶

In addition, with respect to the requirement that the number of Non-Industry Directors, including at least two Independent Directors, will equal or exceed the sum of the number of Industry Directors and Member Representative Directors, the Commission believes that the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,⁴⁷ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.⁴⁸ Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process.⁴⁹ The Commission believes that public directors can provide unbiased perspectives, which may enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of IEX

⁴⁵ See IEX Exchange Operating Agreement, Article III, Section 4(a). The Member Nominating Committee will solicit comments from IEX Exchange members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. See IEX Exchange Operating Agreement, Article III, Section 4(b).

⁴⁶ See id.

⁴⁷ 15 U.S.C. 78f(b)(3).

⁴⁸ See, e.g., Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

⁴⁹ See, e.g., MIAX Exchange Order, supra note 30, at 73067.

Exchange.⁵⁰ For similar reasons, the Commission also believes that the additional compositional requirement that applies during such time as IEX Exchange operates a primary listings business (i.e., the requirement that one Director be an officer or director of an issuer and one Director be a representative of investors, in each case, not associated with a Member⁵¹) is consistent with the requirements of Section 6(b)(3) of the Act.

The Commission believes that the IEX Exchange governance provisions are consistent with the Act. In particular, the Commission believes that the requirement in the IEX Exchange Operating Agreement that 20% of the directors be Member Representative Directors and the means by which they will be chosen by IEX Exchange members provide for the fair representation of members in the selection of directors and the administration of IEX Exchange and therefore are consistent with Section 6(b)(3) of the Act.⁵² As the Commission has previously noted, this requirement helps to ensure that members have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.⁵³

2. Interim Exchange Board

IEXG will appoint an interim Exchange board of directors ("Interim Exchange Board") at a special meeting, which will include interim Member Representative Directors. The interim

⁵⁰ See, e.g., Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Exchange Order"); Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11261 (March 6, 2006) ("NYSE/Archipelago Merger Approval Order"); and BATS Y Exchange Order, supra note 30 at 51298.

⁵¹ See IEX Exchange Operating Agreement, Article III, Section 2(b).

⁵² 15 U.S.C. 78f(b)(3).

⁵³ See, e.g., Nasdaq Exchange Order, supra note 50; and BATS Y Exchange Order, supra note 30. See also NYSE/Archipelago Merger Approval Order, supra note 50.

Member Representative Directors will be selected by the Buy-Side Trading Advisory Committee (“TAC”) of IEXG from a list of potential candidates submitted by current subscribers of the IEX ATS.⁵⁴ IEX represents that these IEX ATS subscribers are expected to become members of IEX Exchange through submission of and approval of an Exchange Waive-In Membership Application.⁵⁵ IEX also represents that it currently expects that the Exchange’s initial membership would consist substantially of the current group of IEX ATS subscribers, including, but not limited to, those IEX ATS subscribers that have submitted potential candidates to the TAC, and that it does not expect to receive a meaningful number of applications for Exchange membership from non-IEX ATS subscribers during the tenure of the Interim Exchange Board.⁵⁶ Upon the appointment of the interim directors by IEXG, the Interim Exchange Board will meet the board composition requirements set forth in the IEX Exchange Operating Agreement.⁵⁷

The Interim Exchange Board will serve until the first annual meeting of the LLC Member, which will take place within 90 days after the Approval Date, when the Exchange Board will be elected pursuant to the full nomination, petition, and voting process set forth in the IEX Exchange Operating Agreement.⁵⁸ IEX represents that it will complete the full nomination, petition, and voting process set forth in the IEX Exchange Operating Agreement as promptly as possible after the effective date of the IEX Exchange Operating Agreement and within ninety (90) days after the Approval Date.⁵⁹

⁵⁴ See Form 1, Exhibit J.

⁵⁵ See id.

⁵⁶ See id.

⁵⁷ See id.

⁵⁸ See id. See also IEX Exchange Operating Agreement, Article III, Section 4.

⁵⁹ See Form 1, Exhibit J.

The Commission believes that the process for electing the Interim Exchange Board, as proposed, is consistent with the requirements of the Act, including that the rules of the exchange assure fair representation of the exchange's members in the selection of its directors and administration of its affairs.⁶⁰ As noted above, the interim Member Representative Directors will be selected by IEXG from a list of potential candidates submitted by a group of current subscribers of the IEX ATS. IEX expects its IEX ATS subscribers to become the initial members of IEX Exchange and does not expect significant numbers of new members initially, and therefore conducting the initial Member Representative Director process among these entities is an appropriate way to put in place promptly at IEX's launch as an exchange a board with Member Representative directors that represent the exchange's initial membership. The Commission notes that this Interim Exchange Board is only temporary, as IEX Exchange represents that it will complete the full nomination, petition, and voting process as set forth in the IEX Exchange Operating Agreement, which will provide persons that are approved as members after the date of this Order with the opportunity to participate in the selection of the Member Representative Directors, within 90 days of when IEX Exchange's application for registration as a national securities exchange is granted.⁶¹ The Commission therefore believes that IEX Exchange's initial interim board process is consistent with the Act, including Section 6(b)(3), in that it is designed to provide representation among the persons and firms likely to become members when IEX commences operations as an exchange and is sufficient to allow IEX to commence operations as an exchange for an interim period prior to going through the regular

⁶⁰ See 15 U.S.C. 78f(b)(3).

⁶¹ IEX's proposed timeline for the interim board process follows a process similar to what the Commission recently approved for the MIAX Exchange. See MIAX Exchange Order, supra note 30.

process to elect a new Exchange Board pursuant to the full nomination, petition, and voting process set forth in the IEX Exchange Operating Agreement.

3. Exchange Committees

In the IEX Exchange Operating Agreement, IEX Exchange has proposed to establish several committees of the Exchange Board. Specifically, IEX Exchange has proposed to establish the following committees of the Exchange Board that would be appointed by the Chairman of the Exchange Board, with the approval of the Exchange Board: an Appeals Committee and a Regulatory Oversight Committee.⁶² In addition, IEX Exchange has proposed to establish a Nominating Committee and a Member Nominating Committee, which would be elected on an annual basis by IEXG, as the sole LLC Member.⁶³ Further, the IEX Chairman, with approval of the Exchange Board, may appoint a Compensation Committee, an Audit Committee, an Executive Committee, and a Finance Committee of the Exchange Board.⁶⁴

The Appeals Committee will consist of two Independent Directors, and one Member Representative Director.⁶⁵ Each member of the Regulatory Oversight Committee must be an Independent Director.⁶⁶ If established, each voting member of the Compensation Committee must be a Non-Industry Director.⁶⁷ If established, a majority of the Audit Committee members

⁶² See IEX Exchange Operating Agreement, Article V, Section 1.

⁶³ See IEX Exchange Operating Agreement Article VI, Section 1.

⁶⁴ See IEX Exchange Operating Agreement Article V, Section 6.

⁶⁵ See IEX Exchange Operating Agreement Article V, Section 6(d).

⁶⁶ See IEX Exchange Operating Agreement Article V, Section 6(c).

⁶⁷ See IEX Exchange Operating Agreement Article V, Section 6(a).

must be Non-Industry Directors, all Audit Committee Directors must be Independent Directors, and a Non-Industry Director will serve as Chairman.⁶⁸

Because the Executive Committee will have the powers and authority of the Exchange Board in the management of the business and affairs of the IEX Exchange between meetings of the Exchange Board, its composition must reflect that of the Exchange Board. Accordingly, if established, the number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors and the percentages of Independent Directors and Member Representative Directors must be at least as great as the corresponding percentages on the Exchange Board as a whole.⁶⁹

As discussed above, the Nominating and Member Nominating Committees will have responsibility for, among other things, nominating candidates for election to the Exchange Board. On an annual basis, the members of these committees will nominate candidates for the succeeding year's respective committees to be elected by IEXG, as the sole LLC Member.⁷⁰

The Commission believes that IEX Exchange's proposed committees, which are similar to the committees maintained by other exchanges,⁷¹ are designed to help enable IEX Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁷²

⁶⁸ See IEX Exchange Operating Agreement Article V, Section 6(b).

⁶⁹ See IEX Exchange Operating Agreement Article V, Section 6(e).

⁷⁰ See IEX Exchange Operating Agreement Article VI, Section 1. Additional candidates for the Member Nominating Committee may be nominated and elected by IEX Exchange members pursuant to a petition process. See *supra* note 42 and accompanying text.

⁷¹ See, e.g., BATS Y Exchange Order and MIAX Exchange Order, *supra* note 30.

⁷² 15 U.S.C. 78f(b)(1).

B. IEX Group and Regulation of IEX Exchange⁷³

When IEX Exchange commences operations as a national securities exchange, IEX Exchange will have all the attendant regulatory obligations under the Act. In particular, IEX Exchange will be responsible for the operation and regulation of its trading system and the regulation of its members. The Commission believes that certain provisions in the IEX Exchange and IEXG governance documents are designed to facilitate the ability of IEX Exchange and the Commission to fulfill their regulatory obligations. The discussion below summarizes some of these key provisions.

1. Ownership Structure; Ownership and Voting Limitations

IEX Exchange will be structured as a Delaware limited liability company (“LLC”), which will be wholly owned by the sole member of the LLC, IEXG. The proposed Third Amended and Restated Certificate of Incorporation of IEX Group, Inc. (“IEXG Certificate”) includes restrictions on the ability to own and vote shares of capital stock of IEXG.⁷⁴ These limitations are designed to prevent any IEXG shareholder from exercising undue control over the operation of IEX Exchange and to ensure that the IEX Exchange and the Commission are able to carry out their regulatory obligations under the Act.

In particular, for so long as IEXG directly or indirectly controls IEX Exchange, no person, either alone or together with its related persons,⁷⁵ may beneficially own more than 40%

⁷³ The Commission did not receive any comments addressing the substance of regulation.

⁷⁴ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See e.g., BATS Y Exchange Order and MIAX Exchange Order, supra note 30. See also Securities Exchange Act Release Nos. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (“DirectEdge Exchanges Order”); and 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008) (File No. 10-182) (“BATS Exchange Order”).

⁷⁵ See IEXG Certificate TENTH (A)(2) (defining “related persons”).

of any class of capital stock of IEXG.⁷⁶ IEX will have a more restrictive condition for IEX Exchange members, wherein IEX Exchange members, either alone or together with their related persons, are prohibited from beneficially owning more than 20% of shares of any class of capital stock of IEXG.⁷⁷ If any stockholder violates these ownership limits, IEXG would redeem the shares in excess of the applicable ownership limit at their par value.⁷⁸ In addition, no person, alone or together with its related persons, may vote or cause the voting of more than 20% of the voting power of the then issued and outstanding capital stock of IEXG.⁷⁹ If any stockholder purports to vote, or cause the voting of, shares that would violate this voting limit, IEXG would not honor such vote in excess of the voting limit.⁸⁰

Any person that proposes or attempts to own shares of capital stock in excess of the 40% ownership limitation, or vote or grant proxies or consents with respect to shares of capital stock in excess of the 20% voting limitation, must deliver written notice to the IEXG board of directors (“IEXG Board”) to notify the IEXG Board of its intention.⁸¹ The notice must be delivered to the IEXG Board not less than 45 days before the proposed ownership of such shares or proposed exercise of such voting rights or the granting of such proxies or consents.⁸²

⁷⁶ See IEXG Certificate TENTH (B)(1.1).

⁷⁷ See IEXG Certificate TENTH (B)(1.2).

⁷⁸ See IEXG Certificate TENTH (E). Any shares which have been called for redemption shall not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote. Once redeemed by IEXG, such shares shall become treasury shares and shall no longer be deemed to be outstanding. See id. Furthermore, if any redemption results in another stockholder owning shares in violation of the ownership limits described above, IEXG shall redeem such shares. See id.

⁷⁹ See IEXG Certificate TENTH (B)(1.3).

⁸⁰ See IEXG Certificate TENTH (D).

⁸¹ See IEXG Certificate TENTH (B)(4).

⁸² See id.

The IEXG Board may waive the 40% ownership limitation and the 20% voting limitation for non-members, pursuant to a resolution duly adopted by the IEXG Board, if it makes certain findings.⁸³ The IEXG Board is specifically prohibited from waiving the voting and ownership limits above 20% for IEX Exchange members and their related persons.⁸⁴ As required by the IEXG Certificate, any waiver for non-members would not be effective unless and until approved by the Commission pursuant to Section 19 of the Act.⁸⁵

The IEXG Certificate also contains provisions that are designed to further safeguard the ownership and voting limitations described above, or are otherwise related to direct and indirect changes in control. Specifically, any person that, either alone or together with its related persons owns, directly or indirectly, of record or beneficially, 5% or more of the capital stock of IEXG will be required to immediately notify the IEXG Board in writing upon acquiring knowledge of

⁸³ See IEXG Certificate TENTH (B)(2.2). The required determinations are that (A) such waiver will not impair the ability of IEX Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder, (B) such waiver is otherwise in the best interests of IEXG, its stockholders, and IEX Exchange, (C) such waiver will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder, and (D) the transferee in such transfer and its related persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act). See IEXG Certificate TENTH (B)(2.2) and (B)(3). The Commission has previously approved identical rules of other exchanges that provide for the ability of the exchange to waive the ownership and voting limitations discussed above for non-members of the exchange. See, e.g., BATS Y Exchange Order, supra note 30 at 51296; and MIAX Exchange Order, supra note 30 at 73069. See also Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc. Article Ninth(b)(ii)(B) and (iii); and Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc. Article Fifth(b)(ii)(B) and (iii) (containing identical provisions).

⁸⁴ See IEXG Certificate TENTH (B)(2.2) (“...and such resolution shall not be effective until it is filed with and approved by the Commission.”). These provisions are generally consistent with waiver of ownership and voting limits approved by the Commission for other SROs. See e.g., BATS Y Exchange Order and MIAX Exchange Order, supra note 30. See also BATS Exchange Order and DirectEdge Exchanges Order, supra note 74.

⁸⁵ See IEXG Certificate TENTH (B)(2.2).

such ownership.⁸⁶ Thereafter, such persons will be required to update IEXG of any increase or decrease of 1% or more in their previously reported ownership percentage.⁸⁷

The IEX Exchange Operating Agreement does not include change of control provisions that are similar to those in the IEXG Certificate; however the IEX Exchange Operating Agreement explicitly provides that IEXG is the sole LLC Member of IEX Exchange.⁸⁸ Thus, if IEXG ever proposes to no longer be the sole LLC Member of IEX Exchange (and therefore no longer its sole owner), IEX Exchange would be required to amend the IEX Exchange Operating Agreement. Any changes to the IEX Exchange Operating Agreement, including any change in the provisions that identify IEXG as the sole owner of IEX Exchange, would be a rule change that must be filed with, or filed with and approved by, the Commission pursuant to Section 19(b) of the Act and Rule 19b-4.⁸⁹ Further, pursuant to the IEX Exchange Operating Agreement, IEXG may not transfer or assign, in whole or in part, its ownership interest in IEX Exchange, unless such transfer or assignment is filed with and approved by the Commission pursuant to Section 19 of the Act.⁹⁰

⁸⁶ See IEXG Certificate TENTH(C)(1). The notice will require the person's full legal name; the person's title or status; the person's approximate ownership interest in IEXG; and whether the person has power, directly or indirectly, to direct the management or policies of IEXG. See id.

⁸⁷ See IEXG Certificate TENTH(C)(2). Changes of less than 1% must also be reported to IEXG if they result in such person crossing a 20% or 40% ownership threshold. See id. In addition, IEX Exchange rules also impose limits on affiliation between the IEX Exchange and a member of the IEX Exchange. See IEX Exchange Rule 2.210 (No Affiliation between Exchange and any Member).

⁸⁸ See IEX Exchange Operating Agreement Article I(s).

⁸⁹ See IEX Exchange Operating Agreement, Article IX, Section 1(b) and Section 4. See also 15 U.S.C. 78s(b) and 17 CFR 240.19b-4.

⁹⁰ See IEX Exchange Operating Agreement Article IV, Section 4 and Article XI, Section 12.

Although IEXG is not directly responsible for regulation, its activities with respect to the operation of IEX Exchange must be consistent with, and must not interfere with, the self-regulatory obligations of IEX Exchange. As described above, the provisions applicable to direct and indirect changes in control of IEXG and IEX Exchange, as well as the voting limitation imposed on owners of IEXG who also are IEX Exchange members, are designed to help prevent any owner of IEXG from exercising undue influence or control over the operation of IEX Exchange and to help ensure that IEX Exchange retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act. In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has noted in the past, a member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁹¹ A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, the Commission believes that these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of IEX Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

The Commission believes that IEX's and IEXG's proposed governance provisions are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so

⁹¹ See, e.g., BATS Y Exchange Order and MIAX Exchange Order, *supra* note 30.

organized and have the capacity to carry out the purposes of the Act.⁹² In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or IEX Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

2. Regulatory Independence and Oversight

Although IEXG will not itself carry out regulatory functions, its activities with respect to the operation of IEX Exchange must be consistent with, and must not interfere with, IEX Exchange's self-regulatory obligations. In this regard, IEX Exchange and IEXG propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of IEX Exchange. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.⁹³ Specifically:

- The directors, officers, employees, and agents of IEXG must give due regard to the preservation of the independence of the self-regulatory function of IEX Exchange and to its obligations to investors and the general public and must not take actions that would interfere with the effectuation of decisions by the Exchange Board relating to its regulatory functions or that would interfere with IEX Exchange's ability to carry out its responsibilities under the Act.⁹⁴

⁹² 15 U.S.C. 78f(b)(1).

⁹³ See, e.g., MIAX Exchange Order and BATS Y Order, supra note 30. See also DirectEdge Exchanges Order, supra note 74.

⁹⁴ See proposed Amended and Restated By-Laws of IEX Group, Inc. ("IEXG By-Laws"), Article VII, Section 34. Similarly, Article III, Section 1(d) of the IEX Exchange Operating Agreement requires the Exchange Board and each Director to, when managing the business and affairs of IEX Exchange, consider the requirements of Section 6(b) of the Act. Article III, Section 1(e) also requires the Exchange Board, when evaluating any

- IEXG must comply with federal securities laws and the rules and regulations promulgated thereunder, and agrees to cooperate with the Commission and IEX Exchange pursuant to, and to the extent of, their respective regulatory authority. In addition, IEXG's officers, directors, employees, and agents must comply with federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with the Commission and IEX Exchange in respect of the Commission's oversight responsibilities regarding IEX Exchange and the self-regulatory functions and responsibilities of IEX Exchange and IEXG shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.⁹⁵
- IEXG, and its officers, directors, employees, and agents submit to the jurisdiction of the U.S. federal courts, the Commission, and IEX Exchange, for purposes of any action, suit, or proceeding pursuant to U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, IEX Exchange activities.⁹⁶

proposal to take into account (among other things and to the extent relevant), the potential impact on the integrity, continuity and stability of the national securities exchange operated by IEX Exchange and the other operations of IEX Exchange, on the ability to prevent fraudulent and manipulative acts and practices, and on investors and the public, and whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

⁹⁵ See IEXG By-Laws, Article VII, Section 37. Similarly, Article III, Section 1(d) of the IEX Exchange Operating Agreement requires IEX Exchange's directors, officers and employees, in discharging their duties, to comply with the federal securities laws and the rules and regulations promulgated thereunder and to cooperate with the Commission and IEX Exchange pursuant to their respective regulatory authority.

⁹⁶ See IEXG By-Laws, Article VII, Section 38.

- All books and records of IEX Exchange reflecting confidential information pertaining to the self-regulatory function of IEX Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by IEX Exchange and its personnel, including its directors, officers, employees and agents, and will not be used by IEX Exchange for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any IEX Exchange member) other than to personnel of the Commission, and those personnel of IEX Exchange, members of committees of the Exchange Board, members of the Exchange Board, or hearing officers and other agents of IEX Exchange, to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of IEX Exchange.⁹⁷ Similar provisions apply to IEXG and its directors, officers, employees and agents.⁹⁸
- The books and records of IEX Exchange and IEXG must be maintained in the United States⁹⁹ and, to the extent they are related to the operation or administration of IEX

⁹⁷ See IEX Exchange Operating Agreement Article XI, Section 4.

⁹⁸ The IEXG By-Laws also provide that all books and records of IEX Exchange reflecting confidential information pertaining to the self-regulatory function of IEX Exchange that come into the possession of IEXG, and the information contained in those books and records, will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. See IEXG By-Laws Article VII, Section 35. The IEXG governing documents acknowledge that requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such information or limit the ability of officers, directors, employees, or agents of IEX Exchange or IEXG to disclose such information to the Commission. See IEX Exchange Operating Agreement Article XI, Section 4 and IEXG By-Laws Article VII, Section 35.

⁹⁹ See IEX Exchange Operating Agreement Article XI, Section 4; and IEXG By-Laws Article VII, Section 36.

Exchange, IEXG's books and records will be subject at all times to inspection and copying by the Commission and IEX Exchange.¹⁰⁰

- Furthermore, to the extent they relate to the activities of IEX Exchange, the books, records, premises, officers, directors, employees, and agents of IEXG will be deemed to be the books, records, premises, officers, directors, employees, and agents of IEX Exchange, for purposes of, and subject to oversight pursuant to, the Act.¹⁰¹
- IEXG will take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position as an officer, director, employee or agent (as applicable) to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, and regulatory obligations, with respect to their activities related to IEX Exchange.¹⁰²
- The IEXG Certificate and By-Laws require that, so long as IEXG controls IEX Exchange, any changes to those documents must be submitted to the Exchange Board for approval, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Act and the rules and regulations thereunder, such change shall not be effective until filed with and effective by operation of law, or filed with, and approved by, the Commission.¹⁰³

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of IEX Exchange's regulatory function and facilitate the ability of IEX Exchange to carry out its responsibility and operate in a manner consistent

¹⁰⁰ See IEXG By-Laws Article VII, Section 36.

¹⁰¹ See IEXG By-Laws Article VII, Section 36.

¹⁰² See IEXG By-Laws Article VII, Section 39.

¹⁰³ See IEXG Certificate Article NINTH; and IEXG By-Laws, Article XIV, Section 51.

with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.¹⁰⁴ Whether IEX Exchange operates in compliance with the Act, however, depends on how it and IEXG in practice implement the governance and other rules that are the subject of this Order.

Further, Section 19(h)(1) of the Act¹⁰⁵ provides the Commission with the authority “to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance...” with any such provision by its members (including associated persons thereof).¹⁰⁶ If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1), these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

The Commission also notes that, even in the absence of the governance provisions described above, under Section 20(a) of the Act any person with a controlling interest in IEX Exchange would be jointly and severally liable with and to the same extent that IEX Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did

¹⁰⁴ 15 U.S.C. 78f(b)(1).

¹⁰⁵ See 15 U.S.C. 78s(h)(1).

¹⁰⁶ Id.

not directly or indirectly induce the act or acts constituting the violation or cause of action.¹⁰⁷ In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder.¹⁰⁸ Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.¹⁰⁹ These provisions are applicable to all entities’ dealings with IEX Exchange, including IEXG.

3. Regulatory Oversight Committee

The regulatory operations of IEX Exchange will be monitored by the Regulatory Oversight Committee of the Exchange Board. The Regulatory Oversight Committee will consist of at least two members, all of whom must be Independent Directors. The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of IEX Exchange’s regulatory and SRO responsibilities, assessing IEX Exchange’s regulatory performance, and assisting the Exchange Board (and committees of the Exchange Board) in reviewing IEX Exchange’s regulatory plan and the overall effectiveness of IEX Exchange’s regulatory functions.¹¹⁰

Further, a Chief Regulatory Officer (“CRO”) of IEX Exchange will have general supervision over IEX Exchange’s regulatory operations, including responsibility for

¹⁰⁷ 15 U.S.C. 78t(a).

¹⁰⁸ 15 U.S.C. 78t(e).

¹⁰⁹ 15 U.S.C. 78u-3.

¹¹⁰ See IEX Exchange Operating Agreement Article V, Section 6(c). The Regulatory Oversight Committee is responsible for reviewing IEX Exchange’s regulatory budget, and also will meet regularly with the Chief Regulatory Officer. See id.

overseeing IEX Exchange’s surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which IEX Exchange is a party.¹¹¹ The Regulatory Oversight Committee, in consultation with the Chief Executive Officer of IEX Exchange, will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the Chief Regulatory Officer and for recommending personnel actions involving the Chief Regulatory Officer and senior regulatory personnel.¹¹²

4. Regulatory Funding and Services

As a prerequisite for the Commission’s granting of an exchange’s application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.¹¹³ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and rules thereunder and the rules of the exchange.¹¹⁴ The discussion below summarizes how IEX Exchange proposes to conduct and structure its regulatory operations.

a. Regulatory Funding

To help ensure that IEX has and will continue to have adequate funding to be able to meet its responsibilities under the Act, IEX Exchange represents that, if the Commission

¹¹¹ See IEX Exchange Operating Agreement Article VII, Section 9.

¹¹² See IEX Exchange Operating Agreement Article V, Section 6(c). To the extent that the Chief Executive Officer of IEX Exchange has any indirect supervisory responsibility for the role or function of the CRO, including but not limited to, implementation of the budget for the regulatory function or regulatory personnel matters, the Regulatory Oversight Committee will take all steps reasonably necessary to ensure that the Chief Executive Officer does not compromise the regulatory autonomy and independence of the CRO or the regulatory function. See id.

¹¹³ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

¹¹⁴ See id. See also Section 19(g) of the Act, 15 U.S.C. 78s(g).

approves IEX's application for registration as a national securities exchange, IEXG will allocate sufficient assets to IEX Exchange to enable the exchange's operation.¹¹⁵ Specifically, IEX Exchange represents that IEXG will make a cash contribution to IEX Exchange of \$5,000,000, in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.¹¹⁶

IEX Exchange also represents that such cash and in-kind contributions from IEXG will be adequate to operate IEX Exchange, including the regulation of the exchange, and that IEXG and IEX Exchange will enter into an agreement that requires IEXG to provide adequate funding over time for the exchange's operations, including the regulation of IEX Exchange.¹¹⁷

Further, any "Regulatory Funds" received by IEX Exchange will not be used for non-regulatory purposes or distributed to IEXG, but rather will be applied to fund the regulatory operations of IEX Exchange, or, as applicable, used to pay restitution and disgorgement to customers as part of a regulatory proceeding.¹¹⁸ Any excess non-regulatory funds, as determined by IEX Exchange, may be remitted to IEXG.¹¹⁹

¹¹⁵ See Form 1, Exhibit I.

¹¹⁶ See *id.*

¹¹⁷ See *id.* IEX Exchange represents that this agreement will provide that IEX Exchange receive all fees, including regulatory fees and trading fees, payable by IEX Exchange's members, as well as any funds received from any applicable market data fees and tape revenue, and will further provide that IEXG will reimburse IEX Exchange for its costs and expenses to the extent the exchange's assets are insufficient to meet its costs and expenses. *Id.*

¹¹⁸ See IEX Exchange Operating Agreement Article X, Section 4. IEX Exchange Operating Agreement Article I(zz) defines "Regulatory Funds" as "fees, fines, or penalties derived from the regulatory operations of the [IEX Exchange]," but such term does not include "revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the [IEX Exchange], even if a portion of such revenues are used to pay costs associated with the regulatory operations of the [IEX Exchange]." This definition of is consistent with the rules of other SROs. See *e.g.*, By-

b. Regulatory Contract with FINRA

Although IEX Exchange will be an SRO with all of the attendant regulatory obligations under the Act, it has represented to the Commission that it intends to enter into a Regulatory Services Agreement (“RSA”) with FINRA, under which FINRA will perform certain regulatory functions on IEX Exchange’s behalf.¹²⁰ Specifically, IEX Exchange represents that FINRA will perform certain regulatory surveillance of trading activity on IEX Exchange and conduct various regulatory services on behalf of IEX Exchange, which are expected to include performance of investigation, disciplinary, and hearing services.¹²¹ Notwithstanding the RSA, IEX Exchange will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because IEX Exchange anticipates entering into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that would be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of IEX Exchange on IEX Exchange and FINRA entering into a final RSA that specifies the services that FINRA will provide to IEX Exchange.

The Commission believes that it is consistent with the Act for IEX Exchange to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹²² These

Laws of MIAX Exchange, Article 1(ee); By-Laws of NASDAQ PHLX LLC, Article I(ii); and By-Laws of NASDAQ BX, Inc., Article I(ii).

¹¹⁹ See Form 1, Exhibit I. See also IEX Exchange Operating Agreement, Article XI, Section 5. Further, IEX Exchange will not be required to make a distribution to IEXG if such distribution would violate the Act or any other applicable law. See id.

¹²⁰ See Form 1, Exhibits C and L. See also IEX Exchange Rules 1.160(hh) and 6.170.

¹²¹ See Form 1, Exhibit C.

¹²² See, e.g., Regulation ATS Release, supra note 48. See also Nasdaq Exchange Order, supra note 50; and BATS Exchange Order and DirectEdge Exchanges Order, supra note 74.

functions are fundamental elements of a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions for IEX Exchange.¹²³ However, IEX Exchange, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on IEX Exchange's behalf.¹²⁴ In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of IEX Exchange to perform its regulatory functions.¹²⁵ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for IEX Exchange, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by IEX Exchange.¹²⁶

c. 17d-2 Agreements

Section 19(g)(1) of the Act,¹²⁷ among other things, requires every SRO registered as either a national securities exchange or national securities association to examine for, and

¹²³ See, e.g., BATS Y Exchange Order, supra note 30; DirectEdge Exchanges Order, supra note 74; and Nasdaq Exchange Order, supra note 50. The Commission notes that the RSA is not before the Commission and, therefore, the Commission is not acting on it.

¹²⁴ See Section 19(g) of the Act, 15 USC 78s(g); and Section 17(d)(1) of the Act and Rule 17d-2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2, respectively. See also infra notes 127-135 and accompanying text.

¹²⁵ For example, if failings by FINRA have the effect of leaving IEX Exchange in violation of any aspect of IEX Exchange's self-regulatory obligations, IEX Exchange would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., Nasdaq Exchange Order, supra note 50; BATS Exchange Order, supra note 74; and DirectEdge Exchange Order, supra note 74.

¹²⁶ See, e.g., Nasdaq Exchange Order, supra note 50.

¹²⁷ 15 U.S.C. 78s(g)(1).

enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.¹²⁸ Rule 17d-2 of the Act permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.¹²⁹ These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO.¹³⁰ Such regulatory duplication would add unnecessary expenses for common members and their SROs.¹³¹

A 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹³² Many SROs have

¹²⁸ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

¹²⁹ See Section 17(d)(1) of the Act and Rule 17d-2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2, respectively. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO ("common members"). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members. Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect common members. See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d-2 Adopting Release").

¹³⁰ See, e.g., Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066, 6074 (ISE Mercury exchange order).

¹³¹ See id.

¹³² See Rule 17d-2 Adopting Release, supra note 129.

entered into Rule 17d-2 agreements.¹³³ IEX has represented to the Commission that IEX Exchange and FINRA intend to file a 17d-2 agreement with the Commission covering common members of IEX Exchange and FINRA.¹³⁴ This agreement would allocate to FINRA regulatory responsibility, with respect to common members, for specified regulatory and enforcement matters arising out of specified common rules and specified provisions of the Act and the rules and regulations thereunder. In addition, IEX Exchange has represented to the Commission that it intends to become a party to the existing multiparty Rule 17d-2 plan for the surveillance, investigation, and enforcement of common insider trading rules.¹³⁵

Because IEX Exchange anticipates entering into these 17d-2 agreements, it has not made provision to fulfill the regulatory obligations that would be undertaken by FINRA and other SROs under these agreements with respect to common members.¹³⁶ Accordingly, the Commission is conditioning the operation of IEX Exchange on approval by the Commission of a 17d-2 agreement between IEX Exchange and FINRA that allocates the above specified matters

¹³³ See, e.g., Securities Exchange Act Release Nos. 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28057 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. (“NASD”) (n/k/a FINRA) and CBOE concerning the CBOE Stock Exchange); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4-529) (NASD/ISE); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/Nasdaq).

¹³⁴ See Form 1, Exhibit C.

¹³⁵ See id. See also Securities Exchange Act Release No. 65991 (December 16, 2011), 76 FR 79714 (December 22, 2011) (File No. 4-566) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan relating to the surveillance, investigation, and enforcement of insider trading rules).

¹³⁶ The Commission notes that regulation that is to be covered by the 17d-2 agreement for common members will be carried out by FINRA under the RSA for IEX Exchange members that are not also members of FINRA.

to FINRA, and the approval of an amendment to the existing multiparty Rule 17d-2 agreement specified above to add IEX Exchange as a party.

C. IEX Trading System

Numerous comment letters the Commission received on IEX's Form 1 application focused on IEX's proposed trading rules and the operation of its system. Much of the public comment centered on issues related to specific features of IEX's proposed trading system – namely, its “Point-of-Presence” (“POP”) and “coil” infrastructure (sometimes referred to as IEX's “speed bump”) and the manner in which IEX originally proposed (prior to Amendment Nos. 2, 3, and 4) to provide outbound routing services through its affiliated routing broker-dealer. IEX submitted several response letters to address these issues before amending its Form 1 in Amendment Nos. 2, 3, and 4 to propose a fundamentally different approach to outbound routing. As detailed in the Order Instituting Proceedings, in these amendments IEX proposed a material change to its approach to outbound routing through its affiliated routing broker-dealer. In the Order Instituting Proceedings, the Commission provided public notice of IEX's amendments and solicited commenters' views as to whether IEX's proposed revisions, including the changes to its outbound routing functionality, were consistent with the Act. The outbound routing issue, other issues related to IEX's POP and coil infrastructure, and other issues that are relevant to IEX's proposed trading system in the context of the Commission's consideration of IEX's Form 1 are addressed below.

1. Public Comment Overview and Commission Discussion

The Commission received letters in support,¹³⁷ as well as letters opposing or criticizing in whole or part some of IEX's proposed features.¹³⁸ Among the commenters who supported IEX's Form 1, most argued that IEX would offer a market solution to address certain market inefficiencies and conflicts of interest in a manner that is intended to protect the interests of retail and buy-side investors.¹³⁹ In particular, though IEX did not propose any fees in its Form 1,

¹³⁷ See, e.g., Leuchtkafer First Letter; Leuchtkafer Second Letter; Verret Letter; Shatto Letters 1, 2, and 3; Simonelis Letter; Capital Group Letter; Southeastern Letter; Navari 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; Colbert Letter; Lewis Letter; Hovanec First Letter; Hovanec Second 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; Sherman Letter; CALSTRS Letter; PSRS/PEERS Letter; Asset Owners/Investment Managers March 21 Letter; Maqbool Letter; Israel Letter.

¹³⁸ See, e.g., BATS First Letter; BATS Second Letter; BATS Third Letter; NYSE First Letter; NYSE Second Letter; NYSE Third Letter; Nasdaq First Letter; Nasdaq Second Letter; Nasdaq Third Letter; Citadel First Letter; Citadel Second Letter; Citadel Third Letter; Citadel Fourth Letter; Citadel Fifth Letter; FIA First Letter; FIA Second Letter; Hudson River Trading First Letter; Hudson River Trading Second Letter; Anonymous December 5 Letter; Hunsacker Letter; Modern Markets Initiative Letter; Tabb Letter; Weldon First Letter; Markit First Letter; Markit Second Letter; Direct Match Letter; Duffy Letter; Scott Letter; Loh Letter; Anonymous June 16 Letter.

¹³⁹ 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 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” and that IEX will be “a stark alternative to other stock exchange models that seem to be more focused on selling speed and data,” and noting that as an ATS, 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” what it characterized

commenters noted IEX's stated intent not to pursue "maker-taker" pricing and instead offer flat transaction fees.¹⁴⁰ Some commenters praised IEX for offering fewer order types.¹⁴¹ Several commenters highlighted IEX's "coil" delay, discussed in detail below, and asserted that it may

as "the electronic front running that is central to the problems in the market today"); Lewis Letter; Keblish Letter; Secrist Letter; Stevens Letter; Oltean Letter; Meskill Letter; fi360 Letter; TRS Letter; Lynch Letter; Jefferies Letter; T. Rowe Price Letter; Liquidnet Letter; Sherman Letter; Anonymous March 18 Letter (group of anonymous traders noting that they "have empirically found IEX orders to lower transactions costs" relative to other exchanges); Israel Letter (noting that IEX's 350 microsecond delay is "explicitly designed to . . . level the playing field for ordinary investors"). One supportive commenter focused on the fee structure for the IEX ATS, asserting that it is simple and thus favors investors and issuers rather than traders seeking arbitrage profits. See ModernIR Letter at 1-3. This commenter also asserts that trades in the IEX ATS generally are not "offset by predatory activity," which "offers a beneficial environment to the money public companies seek: long-term committed capital." See id. at 1. Some commenters questioned the motive of other commenters, including exchanges, who opposed the proposal. See 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"); Shatto Letter 2 at 1 (noting that the critical commenters "do not represent investors or institutional investors" in arguing that "the SEC does not have to preserve market advantages for these people"); Shatto Letter 3; Stevens Letter; Crespo Letter; Meskill Letter; Brian S. Letter; Hovanec Third Letter; Hovanec Fourth Letter; Hovanec Sixth Letter; Hovanec Seventh Letter.

¹⁴⁰ See, e.g., Capital Group Letter; Southeastern Letter; Navari First Letter; Navari Second Letter; Themis First Letter; Oppenheimer Funds Letter; Healthy Markets Letter; Abel/Noser Letter; Goldman Sachs Letter; Liquidnet Letter; Franklin Templeton Investments Letter; TRS Letter. The Commission notes that IEX will be required to submit separate filings under Section 19(b) of the Act and Rule 19b-4 to establish fees that it will charge to members and other persons using its facilities. Nevertheless, in its Second Response Letter, IEX noted that, as an exchange, it intended to charge a flat transaction fee. See IEX Second Response at 9.

¹⁴¹ 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).

help counter latency arbitrage.¹⁴² In addition, one commenter believed that the coil delay as initially proposed should not be grounds for denying IEX's exchange application, and suggested that IEX be phased into the national market system under a pilot program so that the effect of IEX's access delay on the wider market could be better assessed.¹⁴³

Among the commenters who were critical of aspects of IEX's proposal, most focused on issues surrounding the coil, the operation of and advantages that IEX initially proposed to be provided to IEX's affiliated outbound router, and IEX's proposed order types, which are discussed in detail below.¹⁴⁴ Some commenters suggested that retail orders would not receive

¹⁴² 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; Schroeder M 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; Israel Letter.

¹⁴³ 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). IEX has not proposed such an approach and therefore such an approach is not before the Commission. See Exchange Act Section 19(a)(1).

¹⁴⁴ See 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. In addition, one commenter opposed to approval of IEX's exchange application asserted that IEX has not provided any data establishing the negative aspects of speed-based trading that IEX's intentional delay is meant to counteract or any data that quantifies how its intentional delay would protect investors from such speed-based trading in a way that existing exchanges do not. See Modern Markets Initiative Letter. Another commenter opposed to IEX's application believed it is highly probable that the potential marginal savings in execution costs for the "limited population that use IEX would not exceed the wide increase in infrastructure costs for all market participants" as a result of further fragmentation of the market. See

better executions on IEX,¹⁴⁵ and that IEX has not used historical data or other methods to support its investor protection claims.¹⁴⁶ Other commenters did not express a view on whether the Commission should approve or disapprove IEX's application.¹⁴⁷

2. Trading System Overview

IEX will operate a fully automated electronic order book, and will not maintain or operate a physical trading floor. Only broker-dealer members of IEX and entities that enter into market access arrangements with members (collectively, "Users") will have access to the IEX system.¹⁴⁸ Users will be able to electronically submit market orders, limit orders, and numerous other types of orders to the Exchange from remote locations. IEX will allow firms to register as market makers with affirmative and negative market making obligations, but will not require market makers to be registered before IEX lists or trades a security.¹⁴⁹ Non-marketable orders submitted to IEX could be displayed or non-displayed, depending on the instructions indicated by the IEX member submitting the order.¹⁵⁰ Displayed orders will be displayed on an anonymous basis at a specified price. The IEX system will continuously and automatically

Loh Letter. See discussion, infra Section III.C., of IEX's proposed POP/coil delay, including the comments thereon.

¹⁴⁵ See Markit Second Letter at 4-6; AK Financial Engineering Consultants First Letter; Anonymous June 16 Letter.

¹⁴⁶ See Anonymous March 14 Letter at 1-2. But see Anonymous March 18 Letter (group of anonymous traders noting that they "have empirically found IEX orders to lower transactions costs" relative to other exchanges).

¹⁴⁷ See, e.g., Virtu Letter; Healthy Markets Letter; Tabb Letter; Aesthetic Integration Letter.

¹⁴⁸ To obtain authorized access to the IEX System, each User must enter into a User Agreement with IEX. See IEX Rule 11.130(a).

¹⁴⁹ See IEX Rules 11.150 through 11.154. IEX's rules relating to market makers are similar to the rules of other national securities exchanges. See, e.g., BATS Exchange Rules 11.5 through 11.8.

¹⁵⁰ See IEX Rule 11.220(a)(1).

match orders pursuant to price/time priority, provided that displayed orders and displayed portions of orders will have priority over non-displayed orders and non-displayed portions of orders at the same price without regard to time.¹⁵¹ For any portion of an order that does not execute on IEX, IEX will direct the unfilled portion 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.¹⁵²

With respect to the price of executions that would occur on IEX, the IEX system is designed to comply with the order protection requirements of Rule 611 of Regulation NMS,¹⁵³ commonly referred to as the “Order Protection Rule,” by requiring that, for any execution to occur on the IEX Exchange during regular trading hours, the price must be equal to, or better than, the “protected quotation,” unless an exception to Rule 611 applies.¹⁵⁴ IEX also will protect the national protected best bid and offer during its pre-market and post-market sessions.¹⁵⁵ In addition, the Commission believes that IEX’s rules address locked and crossed markets, as required by Rule 610(d) of Regulation NMS,¹⁵⁶ in that they reflect that IEX is designed not to disseminate interest that locks or crosses a protected quote, require Users to reasonably avoid

¹⁵¹ See IEX Rule 11.220(a)(1). The Commission notes that some commenters referenced a feature of the IEX ATS called “broker priority.” See Citadel First Letter at 8; Birch Bay Letter at 1-2; Loh Letter. IEX has not included as part of its Form 1 application a “broker priority” feature and therefore that feature is not before the Commission as it considers IEX’s Form 1 application.

¹⁵² See IEX Rule 11.230(b). See also Amendment Nos. 2 and 3.

¹⁵³ 17 CFR 242.611.

¹⁵⁴ See IEX Rule 11.230(a)(2). See also 17 CFR 242.611 (defining “protected quotation”).

¹⁵⁵ See IEX Rule 11.230(a)(2)(B).

¹⁵⁶ 17 CFR 242.610(d).

displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.¹⁵⁷

3. Non-Displayed Order Types and Processing

Limit orders that a User marks as non-displayed will not be displayed to anyone and will be ranked in the IEX system at their specified price, subject to the “Midpoint Price Constraint,” which is a price sliding process that prevents non-displayed limit orders from being ranked in the IEX system at a price that is more aggressive than the midpoint of the NBBO.¹⁵⁸ The Midpoint Price Constraint will prevent a non-displayed limit order on IEX’s order book from resting at a price that locks or crosses the NBBO.

Due to IEX’s Midpoint Price Constraint functionality, IEX has proposed a “Book Recheck” functionality that is activated in response to a change to the NBBO, the IEX order book, or when IEX receives inbound messages. When Book Recheck is activated, certain resting, non-displayed orders become “active”¹⁵⁹ and eligible to execute (as the remover of liquidity) against the updated contra-side in IEX’s order book.¹⁶⁰ As a result of the Book Recheck functionality, these resting, non-displayed orders may execute against contra-side orders on the order book that were ineligible for execution, or did not satisfy the order’s conditions (i.e., minimum quantity), when they were originally booked. Through such

¹⁵⁷ See IEX Rule 11.310.

¹⁵⁸ See IEX Rule 11.190(h)(2). Specifically, a non-displayed order on IEX with a limit price more aggressive than the midpoint of the NBBO would be priced at the midpoint, and the price would automatically be adjusted in response to changes in the NBBO to be equal to the less aggressive of the order’s limit price or the midpoint of the NBBO. Id.

¹⁵⁹ The term “active order” is defined by IEX to mean an order checking against the IEX order book for contra-side interest against which to execute, and includes new incoming orders, orders posting to the order book after having been routed to away trading centers, and orders re-checking the order book pursuant to IEX Rule 11.230(a)(4)(D).

¹⁶⁰ See IEX Rule 11.230(a)(4)(D).

executions, Book Recheck also may help alleviate internal locks that may occur on IEX's order book at the midpoint of the NBBO in certain scenarios involving contra-side, non-displayed, minimum quantity orders.

In addition, 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).¹⁶¹ As noted below, updates to these types of non-displayed pegged orders would be processed within the IEX trading system without being subject to the proposed coil delay.¹⁶² Some commenters criticized IEX's proposed non-displayed order types, and in particular IEX's proposed handling of pegged orders.¹⁶³ Some of these commenters also specifically criticized IEX's proposed discretionary peg order type.¹⁶⁴

IEX's proposed discretionary peg order type is a non-displayed, pegged order that, upon entry, is priced by the IEX system to be equal to the less aggressive of the midpoint of the NBBO or the order's limit price, if any. Any unexecuted portion of the order is posted non-displayed on the order book and ranked at the less aggressive of the near-side primary quote (*i.e.*, the NBB for buy orders, the NBO for sell orders) or the order's limit price, if any. The IEX system

¹⁶¹ See IEX Rule 11.190(a)-(b).

¹⁶² See note 206, *infra*, discussing how the proposed coil delay also does not apply to non-displayed limit orders subject to the Midpoint Price Constraint.

¹⁶³ See, *e.g.*, FIA First Letter at 4; FIA Second Letter at 2; Citadel First Letter at 7-10; Citadel Fifth Letter at 2-5; NYSE First Letter at 9-10; NYSE Third Letter at 4-7; Hudson River Trading First Letter at 2-7; Jones C Letter at 2-3; Nasdaq Third Letter at 2. These commenters argue that IEX's proposed handling of resting pegged orders – which, as detailed below, would occur without any delay from IEX's POP/coil – would incentivize dark liquidity over displayed liquidity on IEX. This argument is discussed in the section below that addresses the POP/coil.

¹⁶⁴ See NYSE First Letter at 10; NYSE Fourth Letter at 3-4; Citadel First Letter at 9-10; Citadel Fifth Letter at 5-7; Nasdaq Third Letter at 2-3.

automatically adjusts the price and ranking of the order in response to changes in the NBB (NBO) for buy (sell) orders so that it remains pegged at the near-side primary quote, up (down) to the order's limit price, if any. Once posted to the IEX order book, a discretionary peg order can "exercise discretion" up to (for buy orders) or down to (for sell orders) the midpoint of the NBBO in order to meet the limit price of active orders on the order book, but only when the IEX system determines the near-side, primary quote to be "stable," i.e., not in the process of moving down (up) in the case of buy (sell) orders. If the IEX system deems the near-side primary quote to be "unstable" (sometimes referred to as a "crumbling quote") and therefore in the process of moving down (up) in the case of buy (sell) orders, the discretionary peg order will not be permitted to exercise any discretion in order to meet the limit price of an active order, and will be executable only at its pegged price, i.e., the near-side primary quote.

Quote "stability" or "instability" is an assessment that the IEX system makes in what IEX describes as real-time, based on a pre-determined, objective set of conditions that are detailed in IEX's proposed rule.¹⁶⁵ By not permitting resting discretionary peg orders to execute at a price that is more aggressive than the primary quote during periods of quote "instability," the IEX system is intended to attempt to protect resting discretionary peg orders from unfavorable executions when the market is moving against them. Once the market has moved and the IEX system deems the near-side primary quote to be "stable," discretionary peg orders are re-ranked at the new near-side primary quote, and permitted to exercise discretion up to (for buy orders) or down to (for sell orders) the midpoint of the NBBO in order to meet the limit price of active

¹⁶⁵ See, e.g., IEX Rules 11.190(b)(10) (concerning the discretionary peg order type) and 11.190(g) (concerning quote stability). This functionality is also referred to as IEX's "crumbling quote" indicator.

orders on the order book and thereby potentially provide price improvement to such active orders.

Certain commenters that criticized IEX's discretionary peg order assert that IEX's determination of quote stability and the resulting implications for resting discretionary peg orders amounts to IEX performing services that are typically performed by broker-dealers exercising discretion over customer orders.¹⁶⁶ Two of these commenters claim that allowing IEX to offer its discretionary peg functionality would be inconsistent with the Commission's prior disapproval of a Nasdaq proposal to establish "benchmark orders" and suggests that the Commission articulate when it is and is not appropriate for an exchange to offer services that have traditionally been performed by broker-dealers.¹⁶⁷ The other commenter contends that, due to what it refers to as "the doctrine of regulatory immunity," IEX would be shielded from liability for any errors it makes in determining quote stability whereas broker-dealers can be liable to their customers for order handling errors.¹⁶⁸ This commenter also asserts that IEX's discretionary peg order is overly complex and "would potentially open the door to a virtually infinite range of exchange predictive order types."¹⁶⁹

With regard to its discretionary peg order, IEX states that any action taken with respect to such an order is based on system logic and entirely automated, like other pegged orders.¹⁷⁰ IEX

¹⁶⁶ See, e.g., NYSE First Letter at 10; NYSE Fourth Letter at 2-4; Citadel First Letter at 9-10; Citadel Fifth Letter at 5-7; Nasdaq Third Letter at 2-3.

¹⁶⁷ See NYSE First Letter at 10 (citing Securities Exchange Act Release No. 68629 (January 11, 2013), 78 FR 3928 (January 17, 2013) (SR-NASDAQ-2012-059) ("Benchmark Order Disapproval"); NYSE Fourth Letter at 3-4; Nasdaq Third Letter at 2-3.

¹⁶⁸ See Citadel First Letter at 9-10.

¹⁶⁹ Citadel Fifth Letter at 6-7.

¹⁷⁰ See IEX First Response at 17.

also represents that its rules set forth “the precise mathematical formula” that IEX uses to determine whether a “crumbling quote” situation exists.¹⁷¹ In addition, IEX notes that other exchanges offer non-displayed pegging and discretionary order types and asserts that IEX’s discretionary peg order type does not raise any novel regulatory issues.¹⁷² Further, IEX argues that the Commission’s disapproval of Nasdaq’s proposal to offer “benchmark orders” was based on Nasdaq’s failure to adequately explain “how it would apply the controls required by Rule 15c3-5 under the Exchange Act to benchmark child orders” and the fact that “benchmark orders would not initially be directed to the Nasdaq matching engine, raising potential competitive concerns in relation to Nasdaq members.”¹⁷³ IEX claims that the Commission’s disapproval of Nasdaq’s proposal “clearly differentiates the proposed Nasdaq functionality from IEX’s Discretionary Peg order type” and that IEX’s discretionary peg functionality “is entirely different than the Nasdaq proposal to offer benchmark order routing strategies.”¹⁷⁴

The Commission does not believe that its disapproval of the Nasdaq benchmark order proposal is apposite here. In contrast to IEX’s proposed discretionary peg order, Nasdaq’s proposed “benchmark orders” were not actually exchange orders that would have been executable by the Nasdaq matching engine upon entry. Rather, the initial parent order would have been directed to a third-party application that operated a suite of order execution algorithms (i.e., Volume Weighted Average Price, Time Weighted Average Price, or Percent of Volume).¹⁷⁵ The algorithm thereafter would have attempted to replicate the selected benchmark by generating

¹⁷¹ See IEX Second Response at 18.

¹⁷² See IEX First Response at 17.

¹⁷³ See IEX Second Response at 13.

¹⁷⁴ See *id.*

¹⁷⁵ See Benchmark Order Disapproval, *supra* note 167, at 3928.

and routing child orders to the Nasdaq matching engine or other trading centers.¹⁷⁶ The Commission determined that there were inadequate assurances in Nasdaq's proposal as to how the child orders generated by the Nasdaq application would be subject to appropriate risk controls under the Market Access Rule, Rule 15c3-5 under the Act, and how Nasdaq's provision of such services would not impose an undue burden on competition.¹⁷⁷ In contrast, IEX's discretionary peg order is an order type that is received directly into the IEX book and executable by the matching engine upon entry, and thus the same issues of whether child orders generated by an exchange facility are subject to appropriate risk controls under the Market Access Rule or would result in the exchange imposing an undue burden on competition are not implicated by IEX's discretionary peg order type.

The Commission also notes that existing exchanges offer both discretion and pegging functionalities, including the combination of both of those features in a single order type.¹⁷⁸ Thus, an order type that offers both discretion and pegging features is not novel. Nevertheless, IEX's proposed discretionary peg order type is unique in the way that the discretion functionality will be turned "on" or "off" depending on IEX's quote stability determination. With respect to this feature, IEX Rule 11.190(g) delineates the specific conditions under which IEX discretionary peg orders will or will not be eligible for execution up (down) to the midpoint by setting forth the mathematical formula that IEX uses to determine quote stability.¹⁷⁹ IEX has thus encoded in its rule the totality of the discretionary feature of its proposed discretionary peg

¹⁷⁶ See id.

¹⁷⁷ 17 CFR 240.15c3-5. See also Benchmark Order Disapproval, supra note 167.

¹⁷⁸ See, e.g., Nasdaq Rule 4703(g).

¹⁷⁹ See IEX Rule 11.190(g). One commenter asserted that IEX's crumbling quote determination is novel but also fully transparent, as IEX's rules disclose the full equation for determining whether there is a crumbling quote. See Healthy Markets Letter at 5.

order type, which the Commission believes is a close variant on the discretion and pegging functionality that presently exists on other exchanges. Moreover, as a self-regulatory organization, IEX would be required to submit a proposed rule change to the Commission pursuant to Section 19(b) of the Act¹⁸⁰ prior to implementing any change to the proposed discretionary peg order type, including the quote stability formula. Thus, contrary to the assertions of commenters critical of IEX’s proposed “discretionary” peg order type,¹⁸¹ the Commission does not believe that the hardcoded conditionality of the IEX proposed “discretionary” peg order type provides IEX with actual discretion or the ability to exercise individualized judgment when executing an order. Rather, if IEX’s fixed formula determines the quote to be stable, the discretionary peg order can execute up to the midpoint; if it does not deem the quote to be stable, then it will hold the order to its pegged price. As such, IEX would not exercise discretion over the routing and execution of a resting order.¹⁸² The Commission reiterates that if, for any reason, IEX determines to alter or deviate from its quote stability formula set forth in its rule as it applies to determining quote stability when handling

¹⁸⁰ 15 U.S.C. 78s(b).

¹⁸¹ See supra note 166.

¹⁸² Thus, the Commission believes that one commenter’s concerns related to what it refers to as “the doctrine of regulatory immunity” (see supra note 168) does not present any novel issues. As discussed, the Commission does not believe that IEX’s quote stability determination provides IEX with actual discretion or the ability to exercise individualized judgment when executing an order. IEX will have liability similar to other registered national securities exchanges with respect to its order types, including its “discretionary” peg order type. Further, in response to this commenter’s additional concern that the discretionary peg order “would potentially open the door to a virtually infinite range of exchange predictive order types” (see supra note 169), the Commission notes that new exchange proposed order types are subject to the rule filing process of Section 19(b) of the Act and Rule 19b-4 and the standards in Exchange Act Section 6(b), among other provisions. See also Form 19b-4, General Instructions.

discretionary peg orders, IEX would need to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act¹⁸³ prior to implementing any such change.

4. Order Type Transparency and Complexity, and Odd Lots

More generally, some commenters contend that IEX's order types are not adequately described in IEX's rulebook, or suggest that they are uniquely complex.¹⁸⁴ In addition, one commenter argued that IEX should be required to add additional detail to its rules, including adding examples and a justification of the statutory basis for their consistency with the Exchange Act.¹⁸⁵ In response, IEX asserts that it "provides the same basic order types that are offered by all markets, along with the standard modifiers that are sought by investors and their brokers."¹⁸⁶

The Commission believes that IEX constructed its proposed order type rules in a manner that is reasonably designed to present sufficient and comprehensive information on the available options and possible combinations. While IEX is responsible for ensuring that its rules fully and accurately reflect its systems capabilities and operations, the Commission believes that IEX has structured many of its rules using a template-like approach that is designed to provide basic information about fundamental combinations and system functionality. In addition, the Commission does not believe that IEX's order type rules are uniquely complex in light of

¹⁸³ 15 U.S.C. 78s(b).

¹⁸⁴ See, e.g., NYSE First Letter at 9 (noting that certain of [IEX's] proposed order types, such as the discretionary pegged order, are even more complex than those of other exchanges" and that the "tally of potential different combinations of instructions for limit orders alone is in the hundreds"). See also Citadel First Letter at 8-9; Nasdaq First Letter at 1-2; Nasdaq Third Letter at 1-2. Other commenters suggested the opposite though, and applauded IEX for offering a limited number of order types, which they assert simplifies trading and reduces risks for investors. See, e.g., Healthy Markets Letter at 4; Oppenheimer Letter at 2; Southeastern Letter at 1; Navari Letter at 1; Capital Group Letter at 2; fi360 Letter at 3.

¹⁸⁵ See Nasdaq First Letter at 1-2.

¹⁸⁶ See IEX Second Response at 8.

existing exchange order type offerings. Accordingly, the Commission believes that IEX's order type rules are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.¹⁸⁷

In addition, one commenter noted that IEX proposes not to display odd-lot orders and suggests that the Commission should consider whether this would systematically disadvantage smaller orders that might be submitted by retail investors.¹⁸⁸ In response, IEX noted that current exchanges vary in how they handle odd-lots, and stated that IEX's approach "is designed to ensure that the IEX proprietary market data feed does not include information that cannot be reported to the SIPs."¹⁸⁹ IEX also contends that the commenter's conflation of the treatment of odd-lots with the treatment of retail investors is improper because "these do not necessarily go hand-in-hand."¹⁹⁰ The Commission is not aware of any evidence that the non-display of odd lot orders through proprietary market data feeds would systematically disadvantage retail investors. The Commission does not believe this approach would unfairly discriminate against any type of investor, as any investor may use odd-lot orders.

5. The POP and the Coil

IEX's Point-of-Presence ("POP") and "coil" infrastructure (collectively referred to as the "POP/coil delay") is how IEX Users will connect to IEX, and is one of the most widely

¹⁸⁷ See 15 U.S.C. 78f(b)(5).

¹⁸⁸ See Nasdaq First Letter at 4.

¹⁸⁹ See IEX Second Response at 13.

¹⁹⁰ See id. (noting that "one study found that '20-25% of trades initiated by HFTs are odd lots, and that trades initiated by HFTs are more likely to be odd lots than trades initiated by non-HFTs.'")

commented upon features of IEX. As described in the Order Instituting Proceedings, several commenters expressed concern, among other things, that IEX's initially-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.¹⁹¹ IEX responded by supplementing the record through its first two response letters, and then amending its Form 1 in Amendment Nos. 2, 3, and 4.¹⁹² IEX did include additional detail in proposed new rules as part of Amendment Nos. 2, 3, and 4 and the Commission published notice of those changes and solicited comment on them.¹⁹³ The POP/coil delay is material to the operation of IEX and so materially affects access of Users to the system that, as an exchange, IEX's rules must reflect with specificity the purpose, operation, and effect of the POP and coil. The Commission notes that IEX's two letters in response to comments provided the necessary detailed information on the POP and coil, and IEX's Amendment No. 2 contained, among other things, a proposed new rule to detail the POP and coil. The Commission believes that IEX has addressed the commenters' concern by adding a sufficiently detailed new rule to its rulebook to provide a description of the POP/coil structure. The Commission notes that commenters did not raise further concerns on this issue after publication of Amendment No. 2.

¹⁹¹ See, e.g., NYSE First Letter; Nasdaq First Letter; Citadel First Letter at 10-11; Citadel Second Letter at 2-3; BATS First Letter at 2; Weldon Letter. IEX noted that the POP/coil is described in its Form ATS, which has been published on IEX's website since it commenced operations as an ATS in October 2013, and has been "widely chronicled" across numerous publications. See IEX Second Response at 17-18.

¹⁹² See IEX First Response; IEX Second Response; Amendment Nos. 2, 3 and 4. Under IEX Rule 11.510, the IEX routing logic would be able to access the IEX book via an access delay that imposes 350 microseconds of latency, identical to the POP/coil delay experienced by non-affiliated IEX users when they submit a non-routable order to the IEX book.

¹⁹³ See Order Instituting Proceedings, supra note 13.

Access to IEX by all Users will be obtained through a POP,¹⁹⁴ which IEX represents is located in Secaucus, New Jersey.¹⁹⁵ According to IEX, after entering through the POP, a User's electronic message sent to the IEX trading system must physically 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).¹⁹⁶ After exiting the coil, the User's message travels an additional physical distance to the IEX trading system, located in Weehawken, New Jersey.¹⁹⁷ According to IEX, when the length of coil is combined with the physical distance from the POP to the IEX trading system in Weehawken, it equates to an equivalent 350 microseconds of latency.¹⁹⁸ 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 coil from the POP in order to initially reach IEX.¹⁹⁹ 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.²⁰⁰ IEX's direct proprietary market data feed, which is an optional data feed that IEX

¹⁹⁴ See IEX Rule 11.510; see also Amendment Nos. 2 and 3.

¹⁹⁵ See IEX First Response at 3.

¹⁹⁶ See IEX First Response at 3. The Commission notes, by way of analogy, that this is equivalent to a trading center locating its matching engine a certain distance (equivalent to the distance traversed during the POP/coil delay) from its nearest user or, alternatively, not permitting any user to be located closer than that distance to the matching engine.

¹⁹⁷ See Exhibit E to IEX's Form 1 submission, at 12. See also IEX First Response at 3.

¹⁹⁸ See IEX Rule 11.510 ("Communications with the System from the POP are subject to an equivalent 350 microseconds of latency between the network access point of the POP and the System at the primary data center (due to traversing the physical distance provided by coiled optical fiber and geographic distribution)"); see also IEX First Response at 3. A microsecond is one millionth of a second.

¹⁹⁹ See id.

²⁰⁰ See id. As a result, a non-routable immediate-or-cancel ("IOC") order, which is a type of order that IEX would permit Users to send to the IEX system, would traverse the proposed POP/coil (and its attendant 350 microsecond delay) before arriving at the IEX

would make available to subscribers, also would traverse the coil before being accessible to Users at the POP.²⁰¹

Further, under IEX's Form 1 as amended, there is one type of inbound message and one type of outbound message that would not traverse the POP/coil, specifically:

1. Inbound proprietary market data feeds from other trading centers as well as the SIP feed to the IEX system would not traverse the POP/coil; and
2. 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 for inclusion in the public consolidated market data feeds on the same basis as any other exchange.²⁰²

In addition, 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

system and potentially executing against a displayed quotation on IEX. Likewise, the response from the IEX system to the User indicating the action taken by the IEX system with respect to such IOC order also would traverse the POP/coil and experience a 350 microsecond delay. See id. The POP/coil delay's consistency with the Act is discussed further below in this section. See also Final Interpretation, supra note 13.

²⁰¹ See IEX Rule 11.510; see also IEX First Response at 3.

²⁰² See IEX Rule 11.510(c)(2); see also IEX First Response at 4; . As explained in the Order Instituting Proceedings, under IEX's Form 1 as it existed prior to Amendment No. 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) also would not have traversed the POP/coil (though execution and transaction reports sent from IEX back to Users would traverse the POP/coil and thus would be delayed). This is because IEX would have initially directed the entirety of all orders, including routable orders, to the IEX matching engine and then routed away any excess shares via IEXS directly (and without having to first pass through the POP/coil delay as it routes shares outbound). In Amendment Nos. 2, 3, and 4, IEX proposed to re-design the way the IEX system would handle routable orders, as described below, in order to place its outbound routing function on parity with competing broker-dealers.

trading system, which would otherwise traverse the POP/coil, for each update.²⁰³ The effect of this, in connection with the fact that orders sent inbound to IEX must traverse the POP/coil while IEX's matching engine will take in direct market data feeds from other trading centers without any POP/coil delay,²⁰⁴ is that IEX intentionally employs a methodology using physical path latency to affect how long it takes for a packet of information to travel from the User to its matching engine but does not delay the IEX system's ability to detect and react to price changes at other trading centers.²⁰⁵

Accordingly, IEX imposes an intentional delay on Users' ability to access IEX's matching engine but the delay does not apply to IEX's adjustment of resting pegged order prices on its book.²⁰⁶ This provides IEX's matching engine with a time advantage²⁰⁷ to allow it to more effectively manage the price update process for non-displayed pegged orders resting on its book when the market moves. However, as a by-product of delaying access to non-displayed pegged orders on its book, IEX necessarily delays access to all other interest on its book, including its displayed quotation.

²⁰³ See IEX Rule 11.510(c)(1) (noting that order book processing occurs within the IEX system and does not traverse the POP); see also IEX First Response at 3-4.

²⁰⁴ See IEX Rule 11.510; see also IEX First Response at 4.

²⁰⁵ See IEX Rule 11.410 (detailing the direct feeds that IEX uses as the primary source of market data that it uses to inform its matching engine's view of the consolidated best prices in the marketplace).

²⁰⁶ In addition, the POP/coil delay does not apply to the operation of IEX's Midpoint Price Constraint, discussed above, which affects resting non-displayed limit orders with limit prices that are more aggressive than the midpoint of the NBBO. See IEX Rule 11.190(h)(2). References herein to "pegged" orders for purposes of discussing IEX's adjustment of resting order prices with no access delay includes non-displayed limit orders subject to the operation of the Midpoint Price Constraint, which are effectively pegged by IEX to the NBBO midpoint, subject to the order's limit price.

²⁰⁷ See IEX Second Response at 2.

In other words, the purpose of IEX’s coil is to provide an intentional buffer that slows down incoming orders to allow IEX’s matching engine to update the prices of resting “pegged” orders when away prices change to protect resting pegged orders from the possibility of adverse selection when the market moves to a new midpoint price.²⁰⁸ The allowable price of a “pegged” order will change whenever the best displayed price across all exchanges changes, but it takes time for IEX’s system to receive other exchange data feeds and recalculate the price of each pegged order resting on its book. For various reasons, IEX’s systems may not recalculate prices as fast as some of the fastest low-latency traders in the market are able to send orders accessing pegged orders resting on IEX at potentially “stale” prices. The Commission believes that the application of the POP/coil delay delays the ability of low-latency market participants to take a “stale”-priced resting pegged order on IEX (i.e., before IEX finishes its process of re-pricing the pegged order in response to changes in the NBBO) based on those market participants’ ability to more effectively digest direct market data feeds and swiftly submit an order before IEX finishes its process of updating the prices of pegged orders resting on its book. According to IEX, this setup 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.”²⁰⁹

Aside from whether the POP/coil delay affects IEX’s ability to have an “automated” and thus “protected” quotation under Regulation NMS, discussed below,²¹⁰ the Commission has

²⁰⁸ However, as a byproduct of delaying access to non-displayed pegged orders on its book, IEX necessarily delays access to all other interest on its book, including its displayed quotation.

²⁰⁹ See IEX First Response at 4.

²¹⁰ See infra Section III.C.7., Protected Quote Status, for a discussion of the status of IEX’s quotation under Regulation NMS.

considered whether it is consistent with the Act and the rules thereunder, in particular Section 6 of the Act. Among other things, Section 6 requires that an exchange's rules be designed to protect investors and the public interest, not be designed to permit unfair discrimination among brokers, dealers, or customers, and not impose any unnecessary or inappropriate burden on competition. For IEX's POP/coil delay, discussed below, the Commission finds that IEX's proposed rules are 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.

The Commission first considers IEX's POP/coil delay as applied to outbound data. The POP/coil delay applies to IEX's outbound proprietary market data, other than the data it sends to the SIP. Doing so allows market participants to execute on IEX while slightly delaying the news of that execution to IEX's proprietary market data feed and to the participants to the trade (through not to the applicable SIP), which in effect allows the order sender to avoid the potential for information leakage when subsequently accessing liquidity on other markets before news of its execution on IEX could affect resting liquidity on those markets (e.g., potentially resulting in cancellations or re-pricing of interest resting on away markets). Exchanges are not required to offer proprietary market data, but those that do must offer it to all market participants in a not unfairly discriminatory manner.²¹¹ Because IEX delays its proprietary market data feed uniformly to all IEX users, as well as to its routing logic, the Commission believes that the outbound delay of IEX market data is not unfairly discriminatory.

The Commission similarly concludes that IEX's inbound POP/coil delay is not unfairly discriminatory and does not impose an unnecessary or inappropriate burden on competition. The

²¹¹ See 15 U.S.C. 78f(b)(5).

delay imposed on inbound messages benefits resting pegged orders on IEX because that delay, together with the fact that IEX takes in direct data feeds from other exchanges unencumbered by the delay, allows IEX to update the prices of resting pegged orders in response to changes in the NBBO (which may include displayed orders on IEX) as quickly as IEX is able to receive data and calculate it before incoming messages, including incoming orders seeking to execute against pegged orders, reach the matching engine. At the same time, the POP/coil delay appears to provide no protection or benefits for displayed orders or non-displayed orders at fixed limit prices.²¹² Several commenters critiqued this aspect of IEX's design as treating resting pegged orders preferentially, which they assert will incentivize dark liquidity on IEX (in the form of pegged orders in particular) over displayed liquidity.²¹³ Most of these commenters suggested that this is contrary to the central purpose of an exchange to provide price discovery through displayed liquidity, and that price discovery, and overall market quality, will deteriorate as a

²¹² See, e.g., Budish Letter at 2, 4-5 (noting that IEX's POP/coil structure would prevent latency arbitrage of non-displayed pegged orders on IEX but would not prevent latency arbitrage of standard displayed limit orders). The POP/coil, because it will delay all inbound message traffic from all members equally, will not provide any advantages for displayed and non-pegged orders. For example, if a displayed limit order to sell is resting on IEX at \$10, and away markets all move to a higher price of \$10.01 to sell, the User resting at IEX may also want to adjust the price of its order to track the market. However, pursuant to its rules, IEX cannot unilaterally adjust the price of a non-pegged limit order resting on its book at \$10; rather, the User needs to send a message to IEX with instructions on what to do. As it is doing that, a low-latency trader may be able to send in an order to buy against that \$10 offer to sell, and may be able to reach the POP before the member that posted that order is able to send in a cancellation and replace it with an order to sell at \$10.01. Since the low-latency trader's message to buy and the member's cancel message both must enter through the POP and traverse the coil, the race simply takes place at the POP and therefore the two market participants are in the same position on IEX as they would be on other markets without intentional access delays.

²¹³ See FIA First Letter at 4; FIA Second Letter at 2; Citadel First Letter at 7-10; Citadel Fifth Letter at 2-5; NYSE First Letter at 9-10; NYSE Third Letter at 4-7; Hudson River Trading First Letter at 2-7; Hudson River Trading Second Letter at 2-4; Jones C Letter at 2-3; Nasdaq Third Letter at 2.

result.²¹⁴ Commenters on the Notice of Interpretation also criticized what they termed IEX’s “selective” application of its POP/coil delay. One such commenter opined that geographic

²¹⁴ See NYSE First Letter at 9-10 (stating that IEX would be unique “in that all pegged orders would be dark and pegged orders would be provided advantages that other orders on IEX would not enjoy” and that the POP/coil and Book Recheck combine to favor pegged orders to such an extent that “it is likely that IEX’s order book would be composed primarily, or entirely, of these dark, pegged orders and would not be performing one of the central functions of a registered exchange, which is to foster the price discovery process through the display of orders”); NYSE Third Letter at 4, 7; Citadel First Letter at 8 (suggesting that “IEX’s real aim is to create a dark pool on a lit venue to provide itself with regulatory immunity and other benefits afforded to national securities exchanges”); Hudson River Trading First Letter at 2-7 (expressing concern that IEX’s POP would harm price discovery because it offers no protection to displayed limit orders, which “provide the foundation for price discovery,” but delays incoming limit orders and outgoing market data for the benefit of non-transparent pegged orders); Hudson River Trading Second Letter at 4; Jones C Letter at 2-3 (arguing that “IEX is effectively using the discriminatory delay to tilt the playing field, artificially attracting pegged orders from other venues” which will “force other exchanges to introduce similar disparities to avoid losing pegged orders to IEX” and “which will result in more dark liquidity and less timely price discovery market-wide”). One such commenter offered an analysis that attempted to quantify the purported economic advantages and disadvantages implicated by IEX’s proposed handling of resting pegged orders (including the cost to market participants routing orders to IEX when resting pegged orders on IEX, due to the access delay, “fade” to worse prices before they can be accessed), while also noting the limitations of his analysis (including that “[i]n reality, market participants may change their order submission behavior to substantially blunt IEX’s pegged order repricing scheme” by adjusting for the latency imposed by the POP/coil delay when routing to IEX). See Jones C Letter at 3-5. Other commenters criticized that commenter’s analysis. See Themis Third Letter; Hovanec Seventh Letter. In particular, one of these commenters rebutted the analysis as “just measuring transient effects on an NBBO after a trade and then attributing all of that fade as a ‘disadvantage’ of the speed bump, which he puts at \$400 million annually just for Nasdaq activity.” See Themis Third Letter at 2.

Another commenter recommended that IEX be approved as a “manual” market without a protected quote, unless it developed and offered a “bypass” order type that “that foregoes potential price improvement associated with interacting with hidden mid-point peg orders to by-pass the delay and interact with protected quotes.” See Hudson River Trading Second Letter at 4. The Commission notes that midpoint pegged orders, by definition, would be priced more aggressively than IEX’s displayed quotation, and thus by foregoing execution against such midpoint pegged orders in order to execute against less aggressively priced displayed quotations, the suggested “bypass” order type would appear to violate the price priority of the resting midpoint pegged orders. In addition, if such an order type were able to execute against resting non-displayed primary pegged

delays are “inescapable” but “do, in fact, complicate the markets in the presence of Reg NMS” and argued that the proposed interpretation should not apply to “intentional delays that are selective and therefore not equivalent to geographic latencies.”²¹⁵ Another commenter criticized

interest on IEX, the resting primary peg order would be subject to latency arbitrage as a result of the incoming order bypassing the POP/coil delay. The Commission further notes that the issue of permissible delays in accessing protection quotations is addressed in the Commission’s Interpretation Regarding Automated Quotations Under Regulation NMS, which provides that, in the context of determining whether a trading center maintains an “automated quotation” for purposes of Rule 611 of Regulation NMS, the term “immediate” used in Rule 600(b)(3) does not by itself prohibit a trading center from implementing an intentional access delay that is de minimis – i.e., a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s quotations. See Final Interpretation, supra note 13.

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FIA PTG Comment Letter on Notice of Proposed Interpretation (“Interp Letter”) at 6. The commenter criticized the proposed interpretation for not distinguishing “between geographic delays, which apply equally to all information communicated between remote locations, and selective delays like those proposed by IEX” and argued that such delays, “even very short ones, open the door for behaviors that are fundamentally inconsistent with Reg NMS” and “would make Reg NMS requirements around order protection and locked and crossed markets essentially unworkable.” Id. at 2-3. Another commenter argued that an intentional delay can impair a market participant’s ability to access a protected quotation as it could create an “un-level playing field” when “an exchange could update certain orders before allowing members to update theirs.” See MMI Interp Letter at 1. The commenter noted that an investor selling to a resting pegged order that IEX updates while the customer is traversing the POP/coil delay would end up selling to the pegged order at a worse price than she would have sold at had IEX not been able to reprice the pegged order outside of the POP/coil delay. See MMI Interp Letter at 2. In other words, according to that commenter, IEX’s POP/coil delay only protects certain investors (those with dark peg orders resting on IEX) and may harm other long-term investors who cannot compete “against the exchange’s superior speed.” See MMI Interp Letter at 2. The commenter also argued that selective access delays may interfere with a broker’s best execution obligation, and may distort order execution and routing. See MMI Interp Letter at 2-3. Another commenter opposed “non-symmetrical” delays and argued that they add complexity and reduce the likelihood of capturing visible liquidity in the equities markets, which can impact liquidity in the options markets. See Weldon Interp Letter at 1-2. While true that IEX’s POP/coil delay benefits resting non-displayed orders, investors routing to displayed liquidity on IEX will not “compete” against IEX in the sense of racing to access a resting order before IEX can reprice it – because IEX will not reprice displayed orders, there is no such race. Further, the Commission does not believe that such a delay will interfere with best execution or distort routing so long as it

a potential access delay that would “treat dark orders more favorably than displayed orders,” which it characterized as a “significant departure from the way current exchanges operate” and “would lead to less transparent markets, wider spreads and higher costs for investors.”²¹⁶ These commenters’ concern with the “selective” application of an access delay is not so much that an intentional delay is necessarily inconsistent with Rule 611, but that an exchange might impose the delay on others but not itself, thereby advantaging certain types of orders (i.e., pegged orders) or market participants over others.²¹⁷

Other commenters believed that IEX’s proposed re-pricing of resting pegged orders without any POP/coil delay would not be problematic.²¹⁸ One commenter found no material distinction between pegged orders on IEX not being subject to the POP/coil delay and how

is de minimis – i.e., a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s protected quotations.

²¹⁶ See NYSE Interp Letter at 4 (arguing that IEX’s “preferential treatment of resting dark orders” is novel because “[w]hile other markets update pegged orders in the same way as IEX, they do not intentionally delay the ability to update displayed orders on their book or to enter or cancel interest”). See also Citadel Interp Letter at 8. One commenter opined that allowing an exchange to re-price displayed orders during and outside of an access delay “would render such orders conditional” and “result in precisely the kind of ‘maybe’ quotations Rule 611 was designed to prevent.” Markit Interp Letter at 2-3. The commenter urged the Commission to explicitly preclude exchanges from “utilizing the delay to re-price displayed orders.” Id. at 2. The Commission notes that IEX will only reprice pegged orders, which are non-displayed. Non-displayed orders are not reflected in an exchange’s quotations, and Rule 611 applies order protection to publicly displayed quotes only. Accordingly, an access delay that does not allow the repricing of displayed orders does not impact an exchange’s displayed quotation, and cannot be said to lead to “maybe” quotations.

²¹⁷ See, e.g., Citadel Interp Letter at 10 (recommending that intentional delays should “only be permissible where the intentional delay applies equally to all market participants and order types” where “no order type, such as pegged orders, would be permitted to circumvent access delays directly or indirectly by repricing without delay”).

²¹⁸ See Markit Second Letter at 3; Healthy Markets Letter at 4-5. See also Trirogoff Letter (critiquing other commenters’ arguments likening IEX’s pegged order functionality to “last look” functionality).

existing exchanges reprice resting pegged orders, noting that existing exchanges reprice resting pegged orders without being subject to “non-trivial” latency associated with transiting the exchanges’ order entry gateways.²¹⁹

In response, IEX represented that it will provide a “powerful incentive” for Users to submit displayed orders because displayed orders will have priority over non-displayed orders at the same price.²²⁰ IEX also noted that it seeks to “bring the benefits of exchange oversight and regulation to more of the trading that currently happens off-exchange.”²²¹

The Commission does not believe that the advantage IEX provides to pegged orders is unfairly discriminatory or imposes an unnecessary or inappropriate burden on competition. Rather, it is designed to ensure that pegged orders on IEX operate as designed and as reflected in IEX’s rules by accurately tracking the NBBO, and that users of pegged orders on IEX can better achieve their goals when their pegged orders operate efficiently. To accomplish this, IEX slows down incoming order messages by 350 microseconds to allow it to update resting pegged orders when the NBBO changes, so that the resting pegged orders are accurately pegged to current market prices. Without this protection, pegged orders resting on IEX have the potential to be subject to “latency arbitrage” by those market participants using very sophisticated latency-sensitive technology, who can rapidly aggregate market data feeds and react faster than IEX to NBBO updates. In such case, pegged orders on IEX could be executed at disadvantageous

²¹⁹ See Healthy Markets Letter at 4-5.

²²⁰ See *id.*; see also IEX First Response at 17. The Commission notes that IEX represents that it intends to propose discount pricing for displayed orders. Any such proposal will be subject to the rule filing requirements of Section 19 of the Act and Rule 19b-4 thereunder.

²²¹ See IEX Second Response at 12-13. IEX noted that as an ATS, 8.76% of IEX matched volume resulted from displayed orders and it expects that number to “increase substantially” if IEX becomes a registered exchange. See *id.* at 12.

“stale” prices that have not been updated to reflect the new NBBO. Further, because non-displayed pegged order types will be available to all Users of IEX, all Users will be able to benefit from this order type on IEX and thus utilize the POP/coil delay.

IEX’s proposed POP/coil delay is thus narrowly designed to allow IEX to update the prices of non-displayed resting pegged orders so that they can achieve their intended purpose - pricing that is accurately benchmarked to the NBBO. Though the POP/coil delay does not benefit displayed limit orders or non-pegged non-displayed limit orders, such orders would not benefit from the symmetrical POP/coil delay because their purpose is to post or execute consistent with their fixed limit price. The Commission thus finds that IEX’s ability to update the prices of resting pegged orders during the POP/coil delay is not designed to unfairly discriminate among members to the detriment of investors or the public interest and is intended to benefit investors that post pegged orders.

The Commission is engaged in an ongoing broad-based review of equity market structure, including whether there are appropriate incentives to display trading interest and whether the level of undisplayed liquidity may be impairing price discovery.²²² Through its

²²² See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure). While the Commission believes that IEX’s application for exchange registration is consistent with the Act, the Commission notes that IEX’s representation to propose and adopt additional incentives for placing resting displayed orders on IEX may further address commenters concerns, including execution priority for displayed orders at the same price as non-displayed orders (including pegged orders) and material pricing incentives to displayed orders. The Commission also notes that IEX would allow for registered market makers, who, if appointed, would need to maintain displayed quotes pursuant to IEX rules. See IEX Rule 11.150 (Registration as a Market Maker) and Rule 11.151 (Market Maker Obligations). In addition, the Commission observes that non-displayed order types, including pegged order types that are non-displayed, exist across exchanges today. See, e.g., BATS BZX Rule 11.9(c)(9) (mid-point peg order). While one commenter asserts that the repricing of pegged orders in response to market movements is “a traditional

POP/coil delay, IEX is seeking to address what it views as the detrimental effects of speed on pegged orders, and the Act does not foreclose reasonable and not unfairly discriminatory innovations that are designed to protect investors who seek to reliably place passive, non-displayed pegged orders on an exchange.

Finally, the Commission notes that the POP/coil delay applies to all IEX Users equally, and may not be bypassed, for a fee or otherwise.²²³ Accordingly, the Commission concludes that IEX's proposed POP/coil delay 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.

broker-dealer service” (see Citadel Fifth Letter at 5), the Commission notes that many exchanges offer pegged orders that are repriced in a substantively identical manner. See, e.g., BATS BZX Rule 11.19(c)(8) (pegged order); Nasdaq Rule 4703(d) (pegging). Lastly, while one commenter asserts that IEX is unique in that all of its pegged order types would be non-displayed (see NYSE First Letter at 9), the Commission does not believe that the design of IEX's proposed pegged order types is inconsistent with the Act for the reasons discussed in this order.

²²³ A few commenters suggested that a 2012 proposed rule change from NASDAQ PHLX (“Phlx”) should preclude IEX's quotations from being protected. See Securities Exchange Act Release No. 67680 (August 17, 2012), 77 FR 51073 (August 23, 2012) (SR-Phlx-2012-106) (“Phlx 5 Millisecond Proposal”). See also Nasdaq First Letter at 2-3; NYSE First Letter at 7 n.14; FIA First Letter at 2-3; Citadel First Letter at 4. In that matter, Phlx proposed instituting a five millisecond delay in the time between the receipt of an order and the time when it would be presented for execution against the PSX order book. See Nasdaq First Letter at 2. In response, IEX noted that while this delay would have applied to inbound liquidity taking orders, no such delay would have applied to liquidity adding orders. See IEX First Response at 8; IEX Second Response at 5. The Commission notes that Phlx ultimately withdrew its proposal, and therefore the Commission has not ruled on the merits of the Phlx proposal or its consistency with the Act. Nevertheless, the Commission notes that the structure and implementation of the delay proposed in the Phlx proposal appears to differ in significant respects from IEX's POP/coil, particularly with respect to its differential application to members depending on whether they were providing or taking liquidity.

6. Outbound Routing through IEXS

As noted above, IEXS, IEX's affiliated single-purpose outbound routing broker-dealer, will provide outbound routing services for IEX. As detailed in the Order Instituting Proceedings, under the initially published version of IEX's Form 1 (prior to Amendment No. 2), orders routed from IEX through IEXS to away trading centers for execution (as well as reports back to IEX from those away trading centers) would not have traversed the POP/coil (though reports communicated from IEX back to members would have traversed the coil). Several commenters expressed concern that this design would provide an unfair competitive advantage to IEXS over other routing brokers to most quickly and efficiently route to away markets,²²⁴ and might lead other exchanges to implement similar features that would add complexity to the markets and be detrimental to market structure.²²⁵ Some commenters recommended that orders sent from IEX to IEXS be subject to the same POP/coil delay as unaffiliated members.²²⁶ Other commenters supported IEX's initially proposed routing structure.²²⁷

²²⁴ See 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 First Letter.

²²⁵ See Hudson River Trading First Letter at 6-7; BATS Second Letter at 4-5; Citadel Third Letter at 2; Hunsacker Letter; Weldon First Letter.

²²⁶ See Markit First Letter at 3; BATS Second Letter at 5-6; Citadel First Letter at 6; Citadel Third Letter at 2; FIA First Letter at 5; Hunsacker Letter. IEX stated that, under its initially proposed approach to outbound routing through IEXS, IEXS would not receive market data from IEX (or any other market) or have any greater access to information than other IEX members. See IEX First Response at 14; see also IEX Second Response at 14. One commenter challenged IEX's claim and argued that IEX's purported argument concealed the fact that IEXS's competitive advantage does not involve or require IEXS receiving market data from IEX's own book. See Markit First Letter at 2.

²²⁷ See Norges Bank Letter; Mannheim Letter; Sethi Letter.

In response to these comments, IEX submitted Amendment Nos. 2, 3, and 4 to propose a complete redesign of the way its trading system will handle outbound routing by bifurcating its handling of non-routable and routable orders once they initially exit the coil and reach IEX.²²⁸ Specifically, IEX will direct non-routable orders to the IEX matching engine, while it will direct routable orders to the IEX routing logic.²²⁹ According to IEX, the coil, when combined with the physical distance between the POP and the IEX trading system (herein referred to as the “POP/coil”), provides IEX Users sending non-routable orders with 350 microseconds²³⁰ of one-way latency to the IEX book (hereinafter the “POP/coil delay”).²³¹ For routable orders, however, IEX explains that it would insert an additional POP/coil delay within the IEX system to delay routable orders’ access to the IEX book from the IEX routing logic (for those routable orders that the IEX routing logic determines to send to the IEX book) by an additional 350

²²⁸ See IEX Sixth Response, at 1. The proposed revisions to accommodate the new routing process are primarily addressed in IEX Rule 11.510 (Connectivity), as well as in 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).

²²⁹ See IEX Rule 11.230 (stating that an incoming non-routable order will attempt to be matched for execution in the IEX order book, and that, upon receipt of a routable order, the IEX system will process it in accordance with one of the available routing options, which may include routing IOC or FOK orders to the IEX order book). See also IEX Sixth Response at 1; Amendment Nos. 2 and 3; IEX Rule 2.220(a) (defining “System routing logic”).

²³⁰ A microsecond is one millionth of a second.

²³¹ See IEX First Response at 3; see also Amendment Nos. 2 and 3.

microseconds (for a total delay of 700 microseconds before any portion of the routable order first reaches the IEX book).²³² Likewise, messages from the IEX order book back to IEX's routing logic also would be subject to this POP/coil delay in order to effect a latency for its routing logic that is identical to the latency experienced by IEX's non-affiliated members when receiving messages back from the IEX order book.²³³ In addition, the routing logic would receive IEX exchange data products subject to the POP/coil delay.²³⁴ IEX represents that the extra POP/coil delay between the routing logic and the IEX book 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.²³⁵ As such, IEX represents that its routing

²³² See IEX Rule 11.130(a) (noting that members' access to the IEX order book includes the IEX system routing members' routable orders to the order book via the IEX POP); IEX Rule 11.510(c)(1) (stating that "when the System routes all or a portion of a routable order to the Order Book, in accordance with the System routing logic, all inbound and outbound communications (including, without limitation, order messages, cancel messages, and execution report messages found in the Exchange's FIX Specification) traverse an additional POP between the System routing logic and the Order Book"); see also IEX Sixth Response at 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.").

²³³ See IEX Rule 11.510(c)(1); see also IEX Sixth Response 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").

²³⁴ See IEX Rule 11.510(c)(2)(A) (stating that "[t]he System routing logic receives Exchange data products after traversing the POP").

²³⁵ See IEX Sixth Response 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.").

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.²³⁶

Given the 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.²³⁷

In the Order Instituting Proceedings, the Commission noted that it was particularly interested in commenters’ views as to whether the changes to IEX’s outbound routing process set forth in IEX’s Form 1, as amended by Amendment Nos. 2, 3 and 4, are consistent with the Act, in light of commenters’ concerns that, under IEX’s Form 1 prior to Amendment No. 2, IEX’s proposed routing functionality and IEXS would have an advantage over other routing broker-dealers that would be unfairly discriminatory and an inappropriate burden on competition.

²³⁶ See IEX Sixth Response 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”).

²³⁷ See IEX Rule 11.230; see also IEX Sixth Response at 2. 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 IEX Sixth Response at 2. 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.

Several commenters stated the changes to IEX’s proposed routing functionality have sufficiently addressed these concerns and eliminated the advantage IEXS would have had over other routing broker-dealers under the original proposal.²³⁸ One of these commenters questioned how the differing treatment of routable versus non-routable orders under IEX’s amended proposal would be consistent with the Act, and in particular, how it would not be unfairly discriminatory or an inappropriate burden on competition.²³⁹ Another commenter questioned whether the revised routing functionality would operate as effectively as the original proposal, and suggested IEX further clarify how its redesigned functionality would achieve its investor protection goals in comparison to the initial proposal.²⁴⁰

The Commission notes that it carefully scrutinizes exchange-affiliated routing brokers, and has scrutinized with particularity IEX’s proposed operation of IEXS, both as initially proposed and as amended by Amendment Nos. 2, 3, and 4.²⁴¹ As noted in the Order Instituting Proceedings, 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.²⁴² For example, in approving an exchange with an affiliated outbound routing broker, the

²³⁸ See Nasdaq Third Letter at 1; Citadel Fifth Letter at 1; Gilliland and Goodlander Letter at 1-2; FIA Second Letter at 2; NYSE Third Letter at 8-9.

²³⁹ See NYSE Third Letter at 8-9.

²⁴⁰ See Anonymous March 14 Letter at 2-3.

²⁴¹ See *infra* note 243 (citing to prior orders).

²⁴² 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).

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.”²⁴³ The Commission further explained that “advantages, such as greater access to information, improved speed of execution, or enhanced operational capabilities in dealing with the exchange, might constitute unfair discrimination under the Act.”²⁴⁴

Thus, unique access or preferences that an exchange provides to its outbound order routing function must be taken into account in the analysis of whether an exchange provides outbound routing in a manner consistent with the Act, and in particular, the requirement that an exchange’s rules be designed not to permit unfair discrimination and not impose an unnecessary or undue burden on competition.²⁴⁵

²⁴³ 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 242, at 51304 (citing to the BATS Y order).

²⁴⁴ ArcaEx Order, supra note 243, at 55233.

²⁴⁵ If an exchange provides its routing logic with a unique structural advantage, such as preferential access to information from the exchange’s order book, that advantage could effectively be passed on to its affiliated routing broker in the form of faster or more informed routing instructions. For example, if an exchange were to provide its routing logic with exclusive access to information that it did not provide broadly to other routing brokers (e.g., to orders resting non-displayed on the exchange’s book) that would, on its face, raise concerns under Sections 6(b)(5) and 6(b)(8) of the Act. Such an advantage, if not available on identical terms to routing brokers unaffiliated with the exchange, could unfairly discriminate against those unaffiliated brokers or place an inappropriate burden on their ability to compete with the exchange’s outbound routing services, in contravention of the Act. As initially proposed, IEXS would functionally have benefitted from greater access to information compared to other routing brokers because it would have been able to route outbound (based on instructions from the IEX matching engine following an execution (or lack thereof) on IEX) before any other market participant would be in a similar position.

The Commission believes that the revisions to IEX's outbound routing structure set forth in Amendment Nos. 2, 3, and 4 have eliminated any such improper advantage that may have been provided to IEXS under IEX's initial proposal. The Commission notes that, following these amendments, certain commenters that criticized IEX's initially-proposed outbound routing structure expressed support for IEX's amended outbound routing structure.²⁴⁶

The Commission believes that IEX has directly responded to the comments on this point through the changes it proposed in Amendment Nos. 2, 3, and 4. Specifically, by inserting an additional POP/coil delay for routable orders between the IEX routing logic and IEX matching engine, the Commission believes that IEX's ability to provide outbound routing services will now be on substantively comparable terms to a third party routing broker that is a member of IEX. Both the IEX routing logic and a third-party routing broker-dealer would experience 350 microseconds of latency in sending order messages to the IEX matching engine (assuming that the third-party routing broker-dealer sends a non-routable order, which would bypass the IEX routing logic and instead proceed to the IEX matching engine) and 350 microseconds of latency in receiving fill and quote information back from the IEX matching engine. Thus, if the IEX routing logic were to pursue a serial routing strategy, it would do so based on a view of the IEX book that is subject to the POP/coil delay, it would experience the same 350 microsecond latency in the transmission of the order to the IEX book that a routing broker-dealer would experience

²⁴⁶ See, e.g., Citadel Fifth Letter; Nasdaq Third Letter; FIA Second Letter; NYSE Third Letter at 8-9. One commenter that was critical of IEX's initially proposed routing structure suggested that Nasdaq's simultaneous routing functionality would be a viable alternative, and noted that it "did not have a negative impact on price discovery or market quality." See Hudson River Trading Second Letter at 5. See also Securities Exchange Act Release Nos. 67246 (June 25, 2012), 77 FR 38875 (June 29, 2012) (notice of proposed rule change) (notice of Nasdaq simultaneous routing proposal) and 67639 (August 10, 2012), 77 FR 49034 (August 15, 2012) (SR-NASDAQ-2012-071) (order approving proposed rule change).

with its non-routable order, and it would experience the same 350 microsecond latency in waiting to determine what, if any, remainder is left to be routed to away destinations. The Commission believes that these are the same conditions that a third-party routing broker-dealer would experience when pursuing a serial routing strategy involving IEX.

IEX's new router design provides flexibility to its routing functionality to employ either a "spray" approach to routing or a "serial" approach.²⁴⁷ If the IEX routing logic pursues a "spray" routing approach, which would entail the IEX routing logic simultaneously routing shares to destinations on the IEX routing table, including the IEX book, the Commission believes that IEX's new design will place it on the same footing as a third-party routing broker-dealer choosing to "spray" route to multiple trading destinations, including IEX. Specifically, they both would have a view of the IEX book that is subject to the POP/delay, and thus would be in a similar position with respect to determining how many shares to send to the IEX book as part of the "spray" route. Moreover, the shares that are sent to the IEX book from the IEX routing logic or the third-party routing broker-dealer each would have to traverse the POP/coil before reaching the IEX book.

Thus, under IEX's amended outbound routing rule, IEX's affiliated broker-dealer does not have any structural or informational advantages in its provision of routing services as compared to a third-party broker-dealer member of IEX performing a similar function for itself or others. Thus, the Commission believes that IEX's proposed routing structure, as amended,

²⁴⁷ See IEX Sixth Response, at 1 ("Pursuant to the redesign, our Routing logic, when necessary, will have the ability to route to IEX and away exchanges simultaneously utilizing only public information, which will protect the IEX routing member from electronic front running to away exchanges.").

would not be unfairly discriminatory and would not impose an inappropriate burden on competition.²⁴⁸

Accordingly, for the reasons stated above, the Commission believes that the outbound routing functionality of IEX, as amended by Amendment Nos. 2, 3, and 4, and as described in IEX's Sixth Response, is consistent with Section 6(b) of the Act in that it is consistent with the goals of promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, protecting investors and the public interest, and not permitting unfair discrimination between customer, issuers, brokers or dealers.²⁴⁹

7. Protected Quote Status

In light of the POP/coil delay, the issue of whether IEX would operate as an automated trading center, in compliance with Rule 600(b)(4) of Regulation NMS,²⁵⁰ such that its quotations

²⁴⁸ In response to a commenter's questioning whether IEX's differential handling of non-routable orders and routable orders would be unfairly discriminatory or an inappropriate burden on competition (see NYSE Third Letter at 8-9), the Commission notes that while a User that sends a routable order to IEX would experience different latencies as compared to a User that sends a non-routable order to IEX, any User may choose to send either kind of order – routable or non-routable – to IEX. Thus, the Commission does not believe that there is any structural advantage in IEX's proposed handling of either kind of order that would be available to certain Users but not to others. In addition, the Commission notes that the design of IEX's system with respect to its handling of routable versus non-routable orders is similar to that of at least one existing exchange. See Nasdaq Third Letter at 3 (noting that "if a Nasdaq member does not wish to use Nasdaq's routing functionality, it has the ability to send an order directly to the Nasdaq matching engine, thereby bypassing the exchange system that handles orders designated for routing, and would receive an immediate confirmation of the order's execution on Nasdaq"). See also id. at 5 (noting that "[u]sing Nasdaq's order management system is optional, and members opting against using Nasdaq's OMS are not disadvantaged in any way").

²⁴⁹ See 15 U.S.C. 78f(b)(5).

²⁵⁰ 17 CFR 242.600(b)(4).

would be “automated” under Rule 600(b)(3) and thus “protected” under Rule 611 of Regulation NMS (the “Order Protection Rule” or “Trade-Through Rule”),²⁵¹ attracted considerable attention among commenters. Specifically, several commenters questioned whether IEX’s operation of the POP/coil delay would be consistent with either the Order Protection Rule or the intent behind the Rule.²⁵² Commenters mainly assert that the 350 microsecond latency caused by the POP and coil calls into question whether IEX quotations would be “automated,” and therefore whether they can be “protected,” under Regulation NMS.²⁵³

²⁵¹ 17 CFR 242.611. Rule 611(a)(1) requires a trading center to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on the trading center of protection quotations. 17 CFR 242.611(a)(1).

²⁵² See NYSE First Letter at 5; BATS First Letter at 3; FIA First Letter at 2; Nasdaq First Letter at 2; Citadel First Letter at 3. See also Gibson Dunn Letter at 6-7.

²⁵³ See BATS First Letter at 2-4; FIA First Letter at 2; NYSE First Letter at 5-7; Nasdaq First Letter at 2; Citadel First Letter at 2-4. Commenters critical of IEX’s proposed design cite to language from the Regulation NMS Adopting Release where the Commission elaborated on what it means for a quotation to be “automated,” including an interpretation that the term “immediate,” as it relates to the definition of an automated quotation, “precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation” (emphasis added). See BATS First Letter at 3; FIA First Letter at 2; Citadel First Letter at 3; Citadel Second Letter at 3; see also Securities Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496, 37534 (June 29, 2005) (“Regulation NMS Adopting Release”). Based on this language, the commenters contend that IEX’s quotation cannot be considered automated, or at least question whether it can be so considered. Several commenters urged the Commission not to decide this question in the context of IEX’s Form 1. See, e.g., Citadel Second Letter at 4; Nasdaq Second Letter at 1-4; Direct Match Letter at 2-4; Scott Letter. One commenter urged the Commission, should it disagree with the contention that IEX’s quotation cannot be protected, to explain its reasoning in a rulemaking proceeding or exemptive order that is subject to public vetting. See Citadel Second Letter at 4. Other commenters urged the Commission to articulate clear standards regarding what constitutes a permissible access delay. See BATS First Letter at 3-4, 6; T. Rowe Price Letter at 2; Jon D. Letter. One of these commenters supported an interpretation of the definition of an automated quotation that would include the delay resulting from IEX’s POP/coil, but further urged the Commission to articulate clear regulatory standards that would be applicable to all trading venues and market participants. See BATS Second Letter at 2. Other commenters offered support for IEX’s proposed access delay, and challenged the assertion that IEX’s quotation would not meet the definition of

As noted above, 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 proposed POP/coil delay.²⁵⁴ 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.²⁵⁵ IEX's direct proprietary market data feed, which is an optional data feed that IEX would make available to subscribers, also would traverse the coil before exiting at the POP.²⁵⁶ As a result, a non-routable immediate-or-cancel ("IOC") order, which is a type of order that IEX would permit Users to send to the IEX system, would traverse the proposed POP/coil (and its attendant 350 microsecond delay) before arriving at the IEX system and potentially executing against a displayed quotation on IEX.²⁵⁷ Likewise, the response from the IEX system to the User

"automated quotation" under Regulation NMS. See, e.g., Leuchtkafer First Letter at 1-2; Leuchtkafer Second Letter at 1-2; Verret Letter at 4; Franklin Templeton Letter at 2; Upton Letter at 2. IEX asserted that the language of the Order Protection Rule and the Regulation NMS Adopting Release, when considered in light of the context in which the Order Protection Rule was adopted, do not compel the conclusion that IEX's quotes should be considered "manual quotations" instead of "automated quotations." See IEX First Response at 5-7; IEX Second Response at 4; IEX Third Response at 1-3.

²⁵⁴ See IEX First Response at 3-4; see also IEX Rule 11.510.

²⁵⁵ See IEX Rule 11.510.

²⁵⁶ See id.

²⁵⁷ IEX has designed its rules relating to orders, modifiers, and order execution to comply with the requirements of Regulation NMS, including Rule 600(b)(3) in particular by providing an immediate-or-cancel functionality. See IEX Rules 11.190 and 11.230; see also 17 CFR 242.600(b)(3). IEX permits immediate-or-cancel orders to be non-routable when designated as "IEX Only," and thus unexecuted portions of immediate-or-cancel orders designated as such would be canceled without being routed elsewhere, in accordance with Rule 600(b)(3)(iii). See IEX Rule 11.190; see also 17 CFR 242.600(b)(3)(iii). These proposed rules include accepting orders marked as intermarket sweep orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers, and routing orders marked as intermarket sweep orders by a User to a specific trading center for execution. See IEX Rule 11.190(b)(12); see also 17 CFR 242.600(b)(3) and 242.611.

indicating the action taken by the IEX system with respect to such IOC order also would traverse the POP/coil and experience a 350 microsecond delay, for a cumulative inbound and outbound intentional delay imposed on a non-routable order of 700 microseconds.²⁵⁸

Several commenters asserted that this 700 microsecond delay would not be de minimis or otherwise consistent with the Act and the rules thereunder. Some believed that if IEX's best bid and best offer were protected quotations in light of the latency attendant to IEX's POP/coil structure, including the fact that IEX's proprietary market data feed would be subject to such latency as it leaves IEX, it would be detrimental to the market.²⁵⁹ Some commenters asserted that if IEX's quotation were protected, it would negatively affect the accuracy of the NBBO and the price discovery process, and could lead to market instability.²⁶⁰ Others were concerned that it would lead to confusion among market participants, and cause a higher incidence of locked or

²⁵⁸ See IEX Rule 11.510; see also IEX First Response at 3. Outbound transaction and quote messages 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 without an intentional delay. See IEX Rule 11.510(c); see also IEX First Response at 3-4.

²⁵⁹ See, e.g., BATS First Letter at 3; Nasdaq First Letter at 3; FIA First Letter at 3; Citadel First Letter at 4-5; NYSE First Letter at 7-9; Scott Letter; Anonymous December 5 Letter at 2; Hudson River Trading First Letter at 6; PDQ Enterprises Letter at 1-2. See also Gibson Dunn Letter at 7.

²⁶⁰ See BATS First Letter at 3; PDQ Enterprises Letter at 1-2 (arguing that because of IEX's POP/coil delay, "its quotes may not be truly actionable on an alarmingly regular basis" and that, if other exchanges adopt access delays of their own, it will lead to order routers "chasing ghost quotes through numerous speed bumps" and, as a result, "price discovery chaos"); Hudson River Trading First Letter at 7 (predicting that other exchanges will seek delays of their own, which would increase market structure complexity and, "during periods of high volatility, several quotes may be intentionally delayed, clouding the view of the NBBO and leading to greater uncertainty for market participants that could contribute to market instability"); Citadel First Letter at 5; see also Scott Letter ("While the changes proposed by IEX could potentially be positive for IEX and its owners, the changes accompanying the approach could negatively impact an investors' ability to execute a trade at the best price, the centerpiece of our national market system.").

crossed markets.²⁶¹ Some commenters contended that orders routed to IEX would experience lower fill rates and inferior executions because routed orders might miss out on better quotes on other markets if they need to route to a stale quote on IEX that had already traded but that fact has not yet been communicated through IEX's proprietary data.²⁶² In addition, some commenters argued that resting orders, including pegged orders, on away markets could be mispriced, and potentially executed against at a stale price, due to the fact that outgoing proprietary market data from IEX would be subject to the POP/coil latency.²⁶³

²⁶¹ See Nasdaq First Letter at 3; FIA First Letter at 3; Citadel First Letter at 4-5.

²⁶² See FIA First Letter at 3; Citadel First Letter at 4, 9; Citadel Fifth Letter at 2-4; PDQ Enterprises Letter at 1-2; Hudson River Trading First Letter at 5; Hudson River Trading Second Letter at 2-4.

²⁶³ See NYSE First Letter at 7-9; Citadel First Letter at 5; FIA First Letter at 4; Hudson River Trading First Letter at 6; Anonymous December 5 Letter at 2. Some of these commenters contended that this would lead to the development of order types on other markets that are designed to bypass IEX protected quotations. See NYSE First Letter at 8 n.16; FIA First Letter at 4; see also Gibson Dunn Letter at 7 (expressing concern that intentional delays such as that proposed by IEX might “open the floodgates to a new wave of complex order types”). Further, one commenter expressed concern that the POP/coil delay could be exploited for manipulative trading purposes. See Instinet Letter at 1 (expressing concern that an access delay might be used to “place[] into the public data stream materially unexecutable quotes that persist for, on order, one millisecond”). The Commission believes there is no basis to conclude that concerns regarding manipulative and predatory quoting behavior should be more pronounced on IEX due to the POP/coil delay, than with respect to other exchanges. While the commenter discusses the hypothetical submission of quotes to IEX that are cancelled before any other market participant could react to them, but that linger in the public market data stream for longer durations because of the POP/coil delay on outbound proprietary data, the Commission notes that such quoting behavior, to the extent it constitutes manipulative trading behavior, would be prohibited by the federal securities laws and rules, including Section 10(b) of the Act and Rule 10b-5 thereunder, as well as exchange rules and FINRA rules. The Commission also notes that, in addition to IEX's surveillance procedures, and in addition to IEX's rules prohibiting certain trading practices (see the IEX Rule 10.100 series), IEX's rules, as amended, include proposed Rule 10.270, which specifically prohibits disruptive quoting and trading activity on IEX, as well as proposed Rule 9.217, which sets forth an expedited suspension proceeding for alleged violations of Rule 10.270. See Amendment No. 4 to IEX's Form 1. The Commission believes that IEX's rules are appropriately designed to prevent and detect quoting behavior of the sort that the

Other commenters did not believe that protecting IEX's quotations despite IEX's POP/coil would have a detrimental impact on market quality,²⁶⁴ and noted that there is latency associated with the transmission of orders to protected quotations at existing market venues – and in some cases, those latencies are greater than that associated with transmitting orders to IEX even factoring in the proposed POP/coil delay.²⁶⁵ One commenter observed that the 350 microsecond POP/coil delay is “not much more than the normal latency that all trading platforms impose,” and that an exchange could achieve the same delay by “locat[ing] its primary data

commenter is concerned about, as well as, generally, to prevent fraudulent and manipulative acts and practices in accordance with Section 6(b)(5) of the Act. IEX, like all registered national securities exchanges, must comply with the Act and the rules thereunder, and its own rules, and (subject to the provisions of Section 17(d) and the rules thereunder), absent reasonable justification or excuse, enforce compliance with such provisions by its members and persons associated with its members. See 15 USC 78s(g).

²⁶⁴ See Chen & Foley Letter at 5 (“Based on our empirical analysis of Alpha’s speed bump in Canada, we believe that IEX’s application will not result in detrimental impacts on overall market quality in the United States.”).

²⁶⁵ See, e.g., BATS First Letter at 4; BATS Second Letter at 2-3; Healthy Markets Letter at 4; Angel Letter at 2; Kim Letter; Mannheim Letter; Wilcox Letter. Because the POP/coil delay is not variable, market participants should be able to account for it when routing as they could any other known latency. See, e.g., Chen & Foley Letter at 4 (“The fixed nature of IEX’s inbound speed bump enables individual marketable orders from a smart order router spray to be timed to arrive at IEX’s speed bump point-of-presence 350 microseconds prior to arrival at other markets, minimizing any potential for information leakage.”); Jones C Letter at 4 (“[M]arket participants may change their order submission behavior to substantially blunt IEX’s pegged order repricing scheme . . . [by] sending the order to IEX so that it arrives 350 microseconds earlier than it arrives at other venues.”). As noted above, in the Jones C Letter, the commenter attempted to quantify the purported cost that certain market participants would incur when IEX pegged orders “fade” before they can be accessed. See supra note 214. The Commission believes that market participants who adjust their routing strategies to account for IEX’s access delay (which the commenter acknowledged market participants may do) should be able to mitigate the “fade” that they encounter when routing orders to IEX by calibrating the timing of their routed orders so that the orders destined for IEX arrive there 350 microseconds before the orders sent to other venues.

center 65 or more miles away from the other exchange data centers.”²⁶⁶ Another commenter did not find the proposed POP/coil delay “particularly problematic, as the time gap is minimal, and (even including the speed bump) IEX matches orders faster than a number of other markets.”²⁶⁷ Another commenter contended that IEX’s POP/coil delay will have little impact on the NBBO calculations of the consolidated tape.²⁶⁸

In response to commenters that argued that the POP/coil delay would negatively affect market transparency, degrade the NBBO, or cloud price discovery, the Commission notes that Rule 600(b)(3)(v) requires trading centers to immediately update their displayed quotations to reflect material changes. Market participants today already experience very short delays in receiving updates to displayed quotations, as a result of geographic and technological latencies, similar to those experienced when accessing protected quotations. Indeed, the NBBO is an amalgamation of individual protected quotations from different markets located in different places, and is already subject to geographic, network, computational, and other technological latencies.²⁶⁹ For any market participant that chooses to use exchange proprietary data feeds, including IEX’s feed with its attendant 350 microsecond one-way delay, and calculate the NBBO for itself, they will not experience an unprecedented delay in receiving IEX’s data because the 350 microsecond delay on IEX’s data is well within the range of geographic and technological latencies that market participants experience today. Thus, latency to and from IEX will be

²⁶⁶ Angel Letter at 3; see also Abel/Noser Letter at 2.

²⁶⁷ Tabb Letter at 1. See also Jones C Letter at 2 (noting that “from an economic point of view the 350-microsecond delay [proposed by IEX] per se should not be a particular cause for concern, as it is well within the bounds of the existing, geographically dispersed National Market System, and does not seem likely to contribute substantially to a phantom liquidity problem”).

²⁶⁸ See Upson Letter at 1.

²⁶⁹ See Final Interpretation, supra note 13.

comparable to – and even less than – delays attributable to other markets that currently are included in the NBBO.²⁷⁰ For this reason, the Commission does not believe the introduction of a small intentional delay like the POP/coil delay will impair market transparency, lead to greater incidences of locked or crossed markets, or materially impact pegged orders on away markets.

In addition, the Commission published notice of a proposed interpretation regarding the permissibility of intentional access delays.²⁷¹ Today, the Commission is issuing a final interpretation that, when determining whether a trading center maintains an “automated

²⁷⁰ See Healthy Markets Letter at 4 (noting that “[t]he NBBO already includes quotes with varied degrees of time lag” and that the length of IEX’s coiled cable “is far less than the distance between NY and Chicago, and is remarkably similar to the distance between Carteret and Mahwah (36 miles)”). See also IEX First Response at 6 (stating that “the amount of latency imposed by the POP is less than or not materially different than that currently involved in reaching various exchanges based on geographic factors,” and referring, by way of example, to the geographic distance that an order from the Chicago Stock Exchange’s Secaucus, New Jersey data center must physically traverse before reaching the Chicago Stock Exchange’s trading system in Chicago); see also *id.* at 9-10 (noting that the POP/coil latency is shorter than the latency associated with protected quotations published through FINRA’s Alternative Display Facility and the National Stock Exchange’s former order delivery product); IEX Second Response at 11 (noting that the distance between Nasdaq’s Carteret facility and NYSE’s Mahwah facility is 42.8 miles (compared to the IEX coil’s approximately 38 mile equivalent)); IEX Third Response at 2. Other commenters similarly understood that the POP/coil latency is comparable to or shorter than natural and geographic latencies in today’s market. See Angel Letter at 2; BATS First Letter at 4; BATS Second Letter at 2-3; Kim Letter; Mannheim Letter; T. Rowe Price Letter at 2-3; Wilcox Letter. Two commenters specifically suggested that such a delay would be inconsequential or *de minimis*. See Angel Letter at 3; Abel/Noser Letter at 2.

²⁷¹ See Securities Exchange Act Release No. 77407 (March 18, 2016), 81 FR 15660 (March 24, 2016) (S7-03-16) (“Notice of Proposed Interpretation”). In particular, the Commission noted that the POP/coil, because it delays inbound and outbound messages to and from IEX Users, raises a question as to whether, under the interpretation set forth in the Regulation NMS Adopting Release from 2005, IEX will, among other things, “immediately” execute IOC orders under Rule 600(b)(3)(ii), “immediately” transmit a response to an IOC order sender under Rule 600(b)(3)(iv), and “immediately” display information that updates IEX’s displayed quotation under Rule 600(b)(3)(v). See *id.*; see also 17 CFR 242.600(b)(3); Regulation NMS Adopting Release, *supra* note 253, at 37504.

quotation” for purposes of Rule 611 of Regulation NMS, the term “immediate” in Rule 600(b)(3) precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation unless such delay is de minimis – i.e., so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s quotations.²⁷² In accordance with that interpretation and the Commission’s findings, discussed above, that the application of IEX’s POP/coil delay is not unfairly discriminatory and is otherwise consistent with the Act, the Commission does not believe that IEX’s POP/coil delay precludes IEX from maintaining an automated quotation. Because the delay imposed by IEX’s POP/coil is well within 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 Commission believes that such intentional delay will not frustrate the purposes of Rule 611 by impairing fair and efficient access to IEX’s quotations. Accordingly, the Commission finds that an intentional 700 microsecond delay is de minimis and thus IEX can maintain a protected quotation.²⁷³

8. Market Participants Required to Treat IEX’s Quotations as Protected

Consequently, IEX is a trading center whose quotations can be “automated quotations” under Rule 600(b)(3). In turn, IEX is designed to be an “automated trading center” under Rule

²⁷² See Final Interpretation, supra note 13. One commenter argued that there is “no evidence of a need for a de minimis exception or that planned delays will benefit investors in any meaningful way.” Gibson Dunn Letter at 7. This comment pertains mainly to, and is addressed, in the Commission’s Final Interpretation, being issued separately today. As stated in the Final Interpretation, the Commission believes that its updated interpretation allowing for de minimis intentional access delays in certain circumstances is warranted in light of technological and market developments and is consistent with the purposes of Rule 611.

²⁷³ See Final Interpretation, supra note 13.

600(b)(4) whose best-priced, displayed quotation would be a “protected quotation” under Rules 600(b)(57) and 600(b)(58), and for purposes of Rule 611.²⁷⁴

As a result, following the issuance of this order and IEX having met the conditions to begin operating as an automated trading center in a particular symbol, market participants will be required to have reasonably designed policies and procedures to treat IEX’s best bid and best offer in such symbol as a protected quotation.²⁷⁵ At the same time, to meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).²⁷⁶ The Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating IEX’s best bid and best offer as a Protected Quotation as soon as possible but no later than 90 days after the date of this

²⁷⁴ The foregoing discussion of whether IEX can have an automated quote and operate as an automated trading center and therefore receive order protection under Rule 611 focuses on whether the IEX system can “immediately and automatically” execute an order against an IEX quotation within the meaning of the definition of “automated quotation” set forth in Rule 600(b)(3). Rule 600(b)(3) sets forth additional requirements for a quotation to be automated. See 17 CFR 242.600(b)(3). Moreover, being capable of displaying “automated quotations,” as defined in Rule 600(b)(3), is just one of several requirements that a trading center must satisfy in order to be considered an “automated trading center” under Rule 600(b)(4). See 17 CFR 242.600(b)(4). In particular, as summarized above, IEX’s trading rules are designed to satisfy the requirements of Rule 600(b)(3) by permitting orders to be marked as “immediate-or-cancel” and providing for immediate and automatic execution of such incoming orders, cancellation of unexecuted portions, transmission of a response to the sender, and updates to its displayed quotation. See also IEX Rules 11.230 (Order Execution) and 11.240 (Trade Execution, Reporting, and Dissemination of Quotations). Further, to the extent IEX satisfies the conditions of Rule 600(b)(4), it will operate as an “automated trading center.” In such case, IEX can be an automated trading center with automated quotations that are protected under Rule 611.

²⁷⁵ See 17 CFR 242.611(a).

²⁷⁶ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7-10-04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

order, or such later date as IEX begins operation as a national securities exchange. The Commission notes that it has taken the same position with other new equities exchanges.²⁷⁷

D. Discipline and Oversight of Members

As noted above, one prerequisite for the Commission's grant of an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.²⁷⁸ Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and rules thereunder and the rules of the exchange.²⁷⁹ As also noted above, pursuant to the Regulatory Contract, FINRA will perform many of the initial disciplinary processes on behalf of IEX.²⁸⁰ For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to IEX rules. Appeals from disciplinary decisions will be heard by the IEX Appeals Committee²⁸¹ and the IEX Appeals Committee's decision shall be final.²⁸² In addition, the Exchange Board may on its own initiative order review of a disciplinary decision.²⁸³

²⁷⁷ See, e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (approval of the BATS Exchange) and 61698 (March 12, 2010), 75 FR 13151, 13163 (March 28, 2010) (approval of the EDGA and EDGX exchanges).

²⁷⁸ See 15 U.S.C. 78f(b)(1).

²⁷⁹ See id.

²⁸⁰ See supra notes 120-121 and accompanying text. See also IEX Rule 9.001 (noting that IEX and FINRA are parties to a regulatory contract, pursuant to which FINRA will perform certain functions).

²⁸¹ See IEX Rule 1.160(r).

²⁸² See IEX Rule 9.349(c) (providing, among other things, that if the Exchange Board does not call the disciplinary proceeding for review, the proposed written decision of the IEX Appeals Committee shall become final).

²⁸³ See IEX Rule Series 9.350.

The IEX Amended and Restated Operating Agreement and IEX rules provide that the Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws and rules.²⁸⁴ The Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.²⁸⁵ IEX's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.²⁸⁶ Accordingly, as a condition to the operation of IEX, a Minor Rule Violation Plan ("MRVP") filed by IEX under Act Rule 19d-1(c)(2) must be declared effective by the Commission.²⁸⁷

The Commission received one comment on this topic, from a commenter that encouraged IEX to adopt a rule similar to BATS Rule 8.17 (Expedited Client Suspension Proceeding) concerning expedited suspension proceedings with respect to alleged violations of IEX's disruptive quoting and trading rule.²⁸⁸ IEX proposed a substantively similar rule in amendment Nos. 2 and 3.²⁸⁹ The Commission finds that IEX's Amended and Restated Operating Agreement and rules concerning its disciplinary and oversight programs are consistent with the requirements

²⁸⁴ See generally IEX Amended and Restated Operating Agreement Article X and IEX Rules Chapters 8 and 9.

²⁸⁵ See IEX Rule 2.120. See also BATS Rule 2.2 (containing a nearly identical provision).

²⁸⁶ See IEX Rule 9.216(b).

²⁸⁷ 17 CFR 240.19d-1(c)(2).

²⁸⁸ See Instinet Letter at 2.

²⁸⁹ See IEX Rule 9.217.

of Sections 6(b)(6) and 6(b)(7)²⁹⁰ of the Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of IEX provide it with the ability to comply, and with the ability to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of IEX.²⁹¹

E. Listing and Trading on the IEX Exchange²⁹²

1. Registration Under Section 12(b) of the Act

Once IEX begins operations as a national securities exchange, a security will be considered for listing on IEX only if such security is registered pursuant to Section 12(b) of the Act²⁹³ or such security is subject to an exemption.²⁹⁴ An issuer may register a security pursuant to Section 12(b) by submitting to IEX a listing application that provides certain required information.²⁹⁵ The IEX Exchange will review the listing application and, if the listing application is approved, will certify to the Commission that it has approved the security for listing and registration.²⁹⁶ Registration of the security will become effective thirty days after the receipt of such certification by the Commission or within a shorter period of time as the

²⁹⁰ 15 U.S.C. 78f(b)(6) and (b)(7).

²⁹¹ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

²⁹² The Commission did not receive any comments addressing the substance of the listing requirements.

²⁹³ 15 U.S.C. 78l(b).

²⁹⁴ 15 U.S.C. 78l(c); IEX Rules 14.202 and 14.203.

²⁹⁵ 15 U.S.C. 78l(b); IEX Rule 14.202. Prior to submitting a listing application to IEX, the issuer would be required to participate in a free confidential pre-application eligibility review, in which the IEX Exchange will determine whether the issuer meets its listing criteria and is eligible to submit a listing application. See IEX Rule 14.201.

²⁹⁶ See IEX Rule 14.203(f); 15 U.S.C. 78l(d).

Commission may determine.²⁹⁷ Once registration is effective the security is eligible for listing on IEX.²⁹⁸

2. Initial and Continuing Listing Standards

The Commission notes that IEX's proposed initial and continuing listing standards for securities to be listed and traded on the IEX Exchange are virtually identical to the current rules for the Nasdaq Global Select Market of The NASDAQ Stock Market.²⁹⁹ The Commission has previously determined that the initial and continuing listing standards of Nasdaq are consistent with the Act.³⁰⁰ The Commission believes that IEX's proposed initial and continuing listing standards are consistent with the requirements of the Act. With respect to the standards relating to the listing and delisting of companies, including procedures and prerequisites for initial and continued listing on IEX, obligations of security issuers listed on IEX, as well as rules describing the application and qualification process,³⁰¹ IEX's proposed listing rules for securities are

²⁹⁷ 15 U.S.C. 78l(d).

²⁹⁸ See IEX Rule 14.203(f); 15 U.S.C. 78l(d).

²⁹⁹ See Nasdaq Rule 5000 series; IEX Rule Chapters 14 and 16. In addition, IEX proposed a Confidential Pre-Application Review of Eligibility for its proposed listing standards, which is based on the equivalent rule of the New York Stock Exchange. See IEX Rule 14.201; see also NYSE Listed Company Manual Sections 101 and 104 (providing for a free confidential review of the eligibility for listing of any company that requests such a review and provides the necessary documents).

³⁰⁰ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving the application of Nasdaq to become a registered national securities exchange). See also Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR-NASDAQ-2012-013) (approving the adoption of listing rules relating to certain derivative securities products).

³⁰¹ See IEX Rules Chapter 14. IEX Rule 14.201 is the same as the NYSE rule, both of which relate to the confidential pre-application review for eligibility for companies seeking to list on the Exchange. See IEX Rule 14.201; see also NYSE Listed Company Manual Sections 101 and 104. The Commission notes that, except for IEX Rule 14.201 (which is substantively similar to the rule of NYSE), all other requirements relating to the

virtually identical to those of Nasdaq. With respect to IEX Rule 14.201, which is substantially similar to the analogous rule of NYSE,³⁰² IEX requires a company seeking the initial listing of one or more classes of securities on IEX to participate in a free confidential pre-application eligibility review to determine whether the company meets the IEX Exchange's listing criteria and, if, upon completion of this review, IEX determines that a company is eligible for listing, IEX will notify that company in writing that it has been cleared to submit an original listing application. The Commission notes that, if, upon completion of this review, the Exchange determines that a company is ineligible for listing, the company may request a review of IEX's determination pursuant to the process set forth in IEX Rule 9.555. In addition, with respect to the standards relating to other securities, including securities of exchange-traded funds and other exchange-traded derivative securities products, the Commission notes that IEX's proposed listing rules are virtually identical to those of Nasdaq.³⁰³

3. Corporate Governance Standards

The Commission notes that IEX's proposed corporate governance standards in connection with securities to be listed and traded on the IEX Exchange are virtually identical to the current rules of Nasdaq and the NYSE.³⁰⁴ The Commission has previously determined that the corporate governance standards for listed issuers of Nasdaq and NYSE are consistent with

listing of companies are virtually identical to those of Nasdaq. See Nasdaq Rule 5000 series

³⁰² See supra note 301 (referencing IEX Rule 14.201 and NYSE Listed Company Manual Sections 101 and 104).

³⁰³ See IEX Rules Chapter 16. See also the Nasdaq Rule 5000 series.

³⁰⁴ See Nasdaq Rule 5600 et seq.; NYSE Listed Company Manual Section 303A.07(c) (requiring listed companies to maintain an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control). See also IEX Rule 14.414.

the Act.³⁰⁵ The Commission finds that IEX's proposed corporate governance listing standards for listed issuers contained in IEX's proposed rules are consistent with Section 6(b)(5) of the Act and satisfy the requirements of Section 10A(m) of the Act and Rule 10A-3 thereunder.³⁰⁶ The Commission believes that IEX's corporate governance standards for listed issuers are designed to promote independent and objective review and oversight of the accounting and auditing practices of listed issuers and to enhance audit committee independence, authority, and responsibility by implementing the standards set forth in Rule 10A-3.

While IEX does not intend to list securities upon becoming an exchange, it has expressed an intent to do so in the future.³⁰⁷ The Commission believes that the listings program is an important regulatory function of an exchange, and prior to becoming a primary listing market, the Commission expects IEX to ensure its effective compliance with, and enforcement of, its listing standards on an initial and continued basis.³⁰⁸

³⁰⁵ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving the application of Nasdaq to become a registered national securities exchange). The Commission notes that IEX proposed to adopt NYSE's requirement for listed issuers to have an internal audit function. See supra note 304 (referencing NYSE Listed Company Manual Section 303A.07(c) and IEX Rule 14.414). See also Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NYSE-2002-33, SR-NASD-2002-77, SR-NASD-2002-80, SR-NASD-2002-138, SR-NASD-2002-139, and SR-NASD-2002-141) (order approving rules relating to corporate governance of listed companies, including rules relating to the internal audit function).

³⁰⁶ See 15 U.S.C. 78f(b)(5); 15 U.S.C. 78j-1(m); 17 CFR 240.10A-3.

³⁰⁷ See Exhibit N to IEX's Form 1. Upon commencing operations as an exchange, IEX intends to initially trade only securities that have been admitted pursuant to unlisted trading privileges. See Exhibit H to IEX's Form 1.

³⁰⁸ See 15 U.S.C. 78s(g)(1).

4. Trading Pursuant to Unlisted Trading Privileges

As an exchange, IEX will be permitted by Section 12(f) of the Act³⁰⁹ to extend unlisted trading privileges to securities listed and registered on other national securities exchanges, subject to Commission rules. In particular, Rule 12f-5 under the Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.³¹⁰ The Commission notes that IEX's proposed rules allow it to extend unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange.³¹¹ Accordingly, consistent with Rule 12f-5, IEX's proposed rules provide for transactions in the class or type of security to which the exchange intends to extend unlisted trading privileges.³¹² The Commission finds that IEX's proposed rules governing trading pursuant to unlisted trading privileges are therefore consistent with the Act.

F. Section 11(a) of the Act

Section 11(a)(1) of the Act³¹³ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person,

³⁰⁹ 15 U.S.C. 78j.

³¹⁰ See 17 CFR 240.12f-5. See also Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (File No. S7-4-95) (adopting Rule 12f-5 under the Act).

³¹¹ See IEX Rules 11.120 and 16.160. Any such security will be subject to all IEX trading rules applicable to NMS Stocks, unless otherwise noted, including provisions of IEX Rule 11.280 and Chapters 14 and 16 of the IEX Rules. See IEX Rule 16.160.

³¹² IEX's rules currently do not provide for the trading of options, security futures, or other similar instruments.

³¹³ 15 U.S.C. 78k(a)(1).

or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Act,³¹⁴ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;³¹⁵ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, IEX requested that the Commission concur with IEX’s conclusion that IEX members that enter orders into the IEX trading system satisfy the requirements of Rule 11a2-2(T).³¹⁶ For the reasons set forth below, the Commission believes that IEX members entering orders into the IEX trading system would satisfy the requirements of Rule 11a2-2(T).

The Rule’s first requirement is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that

³¹⁴ 17 CFR 240.11a2-2(T).

³¹⁵ This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

³¹⁶ See Letter from Sophia Lee, General Counsel, IEX, to Brent Fields, Secretary, Commission, dated June 10, 2016 (“IEX 11(a) Letter”).

the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.³¹⁷ IEX has represented that the IEX Exchange does not have a physical trading floor, and the IEX trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.³¹⁸ The Commission believes that the IEX trading system satisfies this off-floor transmission requirement.

Second, the Rule requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. IEX represented that at no time following the submission of an order is a member or an associated person of the member able to acquire control or influence over the result or timing of the order's execution.³¹⁹ According to

³¹⁷ See, e.g., Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

³¹⁸ See IEX 11(a) Letter, *supra* note 316.

³¹⁹ See IEX 11(a) Letter, *supra* note 316. IEX notes that a member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

IEX, the execution of a member's order is determined solely by what quotes and orders are present in the system at the time the member submits the order, and the order priority based on the IEX rules.³²⁰ Accordingly, the Commission believes that an IEX member and its associated persons do not participate in the execution of an order submitted to the IEX trading system.³²¹

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the IEX trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.³²² IEX has represented that the design of the IEX trading system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to

³²⁰ See IEX 11(a) Letter, *supra* note 316. The Commission notes that IEX has proposed rules for the registration, obligations, and operation of market makers on the IEX Exchange. IEX has represented that market makers, if any, would submit quotes in the form of orders in their assigned symbols.

³²¹ See, e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (approval of the BATS Exchange) and 61698 (March 12, 2010), 75 FR 13151, 13164 (March 28, 2010) (approval of the EDGA and EDGX exchanges).

³²² See, e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (approval of the BATS Exchange) and 61698 (March 12, 2010), 75 FR 13151, 13164 (March 28, 2010) (approval of the EDGA and EDGX exchanges). In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, *supra* note 317.

IEX.³²³ Based on IEX’s representation, the Commission believes that the IEX trading system satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.³²⁴ IEX members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule’s exemption.³²⁵

³²³ See IEX 11(a) Letter, supra note 316.

³²⁴ See, e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (approval of the BATS Exchange) and 61698 (March 12, 2010), 75 FR 13151, 13164 (March 28, 2010) (approval of the EDGA and EDGX exchanges). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 319 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

³²⁵ IEX represented that it will advise its membership through the issuance of an Information Circular that those members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule’s exemption. See IEX 11(a) Letter, supra note 316.

IV. Exemption from Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

IEX Exchange proposes to incorporate by reference certain FINRA rules as IEX rules. Thus, for certain IEX rules, Exchange members will comply with an IEX rule by complying with the FINRA rule referenced.³²⁶ In connection with its proposal to incorporate FINRA rules by reference, IEX Exchange requested, pursuant to Rule 240.0-12,³²⁷ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those IEX Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.³²⁸ IEX Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. IEX Exchange agrees to provide written notice to its members whenever a proposed rule change to a FINRA rule that is

³²⁶ IEX Exchange proposes to incorporate by reference the 12000 and 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes). See IEX Exchange Rule 12.110 (Arbitration). In addition, IEX Exchange proposes to incorporate by reference FINRA Rules 4360 (Fidelity Bonds), 2090 (Know Your Customer), 2111 (Suitability), 2210 (Communications with the Public), 3230 (Telemarketing), 4110 (Capital Requirements), 4120 (Regulatory Notification and Business Curtailment), 4140 (Audit), 4511 (General Requirements), 4512 (Customer Account Information), 4513 (Records of Written Customer Complaints), 3130 (Annual Certification of Compliance and Supervisory Procedures), 5270 (Front Running of Block Transactions), 7430 (Synchronization of Member Business Clocks), 7440 (Recording of Order Information), and 7450 (Order Data Transmission Requirements) and NASD Rule 3050 (Transactions for or by Associated Persons). See IEX Exchange Rules 2.240 (Fidelity Bonds), 3.150 (Know Your Customer), 3.170 (Suitability), 3.280 (Communications with Customers and the Public), 3.292 (Telemarketing), 4.110 (Financial Condition), 4.120 (Regulatory Notification and Business Curtailment), 4.140 (Audit), 4.511 (General Requirements), 4.512 (Customer Account Information), 4.513 (Record of Written Customer Complaints), 5.130 (Annual Certification of Compliance and Supervisory Procedures), 10.260 (Front Running of Block Transactions), 11.420(c), (d) and (e) (Order Audit Trail System Requirements), and 5.170 (Transactions for or by Associated Persons), respectively.

³²⁷ See 17 CFR 240.0-12.

³²⁸ See Letter from Sophia Lee, General Counsel, IEX, to Brent Fields, Secretary, Commission, dated June 13, 2016.

incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.³²⁹

Using its authority under Section 36 of the Act,³³⁰ the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.³³¹ The Commission is hereby granting IEX Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that IEX Exchange proposes to incorporate by reference. This exemption is conditioned upon IEX Exchange providing written notice to its members whenever FINRA proposes to change a rule that IEX Exchange has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules sought by more than one SRO.

V. Conclusion

IT IS ORDERED that the application of IEX Exchange for registration as a national securities exchange be, and it hereby is, granted.

IT IS FURTHERED ORDERED that operation of IEX Exchange is conditioned on the satisfaction of the requirements below:

³²⁹ IEX Exchange will provide such notice through a posting on the same website location where IEX Exchange posts its own rule filings pursuant to Rule 19b-4 under the Act, within the required time frame. The website posting will include a link to the location on the FINRA website where FINRA's proposed rule change is posted. See id.

³³⁰ 15 U.S.C. 78mm.

³³¹ See, e.g., BATS Y Exchange Order and MIAX Exchange Order, supra note 30; BATS Exchange Order and DirectEdge Exchanges Order, supra note 74.

A. Participation in National Market System Plans. IEX Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan to Implement a Tick Size Pilot Program, and the Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.

B. Intermarket Surveillance Group. IEX Exchange must join the Intermarket Surveillance Group.

C. Minor Rule Violation Plan. A MRVP filed by IEX Exchange under Rule 19d-1(c)(2) must be declared effective by the Commission.³³²

D. 17d-2 Agreement. An agreement pursuant to Rule 17d-2³³³ between FINRA and IEX Exchange that allocates to FINRA regulatory responsibility for those matters specified above³³⁴ must be approved by the Commission, or IEX Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. Participation in Multiparty Rule 17d-2 Plans. IEX Exchange must become a party to the multiparty Rule 17d-2 agreement concerning the surveillance, investigation, and enforcement of common insider trading rules.

F. RSA. IEX Exchange and FINRA must finalize the provisions in the RSA, as described above, that will specify the IEX Exchange and Commission rules for which FINRA will provide certain regulatory functions, or IEX Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

³³² 17 CFR 240.19d-1(c)(2).

³³³ 17 CFR 240.17d-2.

³³⁴ See supra notes 134-135 and accompanying text.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Act,³³⁵ that IEX Exchange shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA rules that IEX proposes to incorporate by reference into IEX Exchange's rules, subject to the conditions specified in this Order.

By the Commission (Chair WHITE and Commissioner STEIN; Commissioner PIWOWAR concurring in part and dissenting with respect to Sections III.C.7 and III.C.8).

Robert Errett
Deputy Secretary

³³⁵ 15 U.S.C. 78mm.

EXHIBIT A

Comment Letters Received Regarding Investors' Exchange LLC's Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934 (File No. 10-222)

<i>Abebe:</i>	Letter from Brook Abebe, Dec. 15, 2015
<i>Abel/Noser:</i>	Letter from Eugene Noser, Abel/Noser Corp., Dec. 17, 2015
<i>Abfall:</i>	Letter from Jeffrey D. Abfall, Dec. 10, 2015
<i>Addy:</i>	Letter from Steven Addy, Dec. 11, 2015
<i>Aesthetic Integration:</i>	Letter from Denis A. Ignatovich and Grant Passmore, Co-Founders, Aesthetic Integration Ltd, Nov. 18, 2015
<i>Agne:</i>	Letter from Mike Agne, Dec. 10, 2015
<i>Ahlfeld:</i>	Letter from Ryan Ahlfeld, Dec. 14, 2015
<i>Akbar:</i>	Letter from Imran Akbar, Dec. 14, 2015
<i>Albert:</i>	Letter from Jean Albert, Dec. 15, 2015
<i>Angel:</i>	Letter from James J. Angel, Ph.D., Associate Professor, McDonough School of Business, Georgetown University, Dec. 5, 2015
<i>Anonymous December 5:</i>	Letter from Anonymous, Dec. 5, 2015
<i>Anonymous December 14:</i>	Letter from Anonymous, Dec. 14, 2015
<i>Anonymous Second December 14:</i>	Letter from Anonymous, Dec. 14, 2015
<i>Anonymous March 14:</i>	Letter from Anonymous, Mar. 14, 2016
<i>Anonymous March 18:</i>	Letter from Anonymous, Mar. 18, 2016
<i>Anonymous June 16:</i>	Letter from Anonymous, June 16, 2016
<i>Arens:</i>	Letter from Richard Arens, Dec. 10, 2015

Armand: Letter from Barry Armand, Dec. 13, 2015

Arnold: Letter from Lonnie Arnold, Jr., Feb. 2, 2016

Asset Owners/Investment Managers March 21: Letter from Kevin McCreadie, President and CIO, AGF Investment Inc.; Steve Berexa, Global CIO Equity, Allianz Global Investors; Bryan Thomson, Senior Vice President, Public Equities, British Columbia Investment Management; Faith Ward, Chief Responsible Investment and Risk Officer, Environment Agency Pension Fund; Michelle de Cordova, Director, Corporate Engagement Public Policy, ESG Services, NEI Investments; Oyvind Schanke, CIO Asset Strategies, Norges Bank Investment Management; and David H. Zellner, Chief Investment Officer, Wespeth Investment Management, Mar. 21, 2016

Baggins: Letter from Roger Baggins, Feb. 2, 2016

Baird: Letter from Ritchie Baird, Jan. 3, 2016

Baker: Letter from Christopher Baker, Dec. 11, 2015

Ballestrand: Letter from Bill Ballestrand, Dec. 14, 2015

Bardini: Letter from Marguerite Bardini, Dec. 14, 2015

Barry: Letter from Catherine Barry, Jan. 2, 2016

Barth: Letter from Donald J. Barth, Mar. 4, 2016

BATS First: Letter from Eric Swanson, EVP and General Counsel, BATS Global Markets, Inc., Nov. 3, 2015

BATS Second: Letter from Eric Swanson, EVP and General Counsel, BATS Global Markets,

Inc., Dec. 20, 2015

BATS Third: Letter from Eric Swanson, EVP and General Counsel, BATS Global Markets, Inc., Feb. 11, 2016

Bautista: Letter from Barry Bautista, June 17, 2016

Ben D.: Letter from Ben D., Mar. 20, 2016

Benites: Letter from Roger Benites, Dec. 13, 2015

Bensky: Letter from Jonathan Bensky, Mar. 3, 2016

Berrizbeitia: Letter from Luis Berrizbeitia, Dec. 14, 2015

Bilyea: Letter from Robert Bilyea, Dec. 17, 2015

Bingham: Letter from George B. Bingham, Jan. 8, 2016

Birch Bay: Letter from Michael Jacejko, Chief Executive Manager, Birch Bay Capital, LLC, Nov. 6, 2015

Black: Letter from Wade Black, Dec. 17, 2015

Boatman: Letter from Peter L. Boatman, June 3, 2016

Bodenstab: Letter from Jeffrey Bodenstab, Dec. 19, 2015

Bogdan: Letter from Michael Bogdan, Dec. 15, 2015

Bohr: Letter from Vincent Bohr, Dec. 11, 2015

Boittiaux: Letter from Thomas Boittiaux, Apr. 22, 2016

Borbridge: Letter from Harold Borbridge, Dec. 13, 2015

Bova: Letter from Nicholas M. Bova, Dec. 14, 2015

Bowcott: Letter from Mike Bowcott, Dec. 9, 2015

Boyce: Letter from Edward J. Boyce, Dec. 14, 2015

Brennan: Letter from Michael Brennan, Dec. 16, 2015

Brenner: Letter from Daniel S. Brenner, Dec. 14, 2015

Brian S.: Letter from Brian S., Dec. 10, 2015

Broder: Letter from Michael K. Broder, Jan. 9, 2016

Bruin: Letter from Eric Bruin, Dec. 16, 2015

Buckingham: Letter from Mallory Buckingham, Dec. 15, 2015

Budish: Letter from Eric Budish, Professor of Economics, University of Chicago Booth School of Business, Feb. 5, 2016

Burger: Letter from Ronald J. Burger, Dec. 19, 2015

Burgess: Letter from Jack M. Burgess, Dec. 26, 2015

Byrnes: Letter from Jannette Byrnes, Dec. 13, 2015

CalSTRS: Letter from Anne Sheehan, Director of Corporate Governance, California State Teachers' Retirement System, Mar. 10, 2016

Campbell: Letter from Mike Campbell, Dec. 15, 2015

Cantori: Letter from John Cantori, Dec. 11, 2015

Capital Group: Letter from Timothy D. Armour, Chairman, The Capital Group Companies, Sep. 29, 2015

Carper: Letter from Carol Carper, Dec. 27, 2015

Chen & Foley: Letter from Haoming Chen and Sean Foley, Ph.D., Feb. 24, 2016

Chesler: Letter from Dan Chesler, Dec. 15, 2015

Chilson: Letter from Cody J. Chilson, Dec. 10, 2015

Chung and Jeon: Letter from Michael Chung and Jayoung Jeon, Apr. 10, 2016

Chung: Letter from Charles Chung, Dec. 15, 2015

Citadel First: Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, Nov. 6, 2015

Citadel Second: Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, Nov. 30, 2015

Citadel Third: Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, Dec. 7, 2015

Citadel Fourth: Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, Feb. 23, 2016

Citadel Fifth: Letter from John C. Nagel, Esq., Managing Director and Sr. Deputy General Counsel, Citadel LLC, Apr. 14, 2016

Clark B.: Letter from Bruce R. Clark, Ph.D., Dec. 22, 2015

Clark J. First: Letter from James T. Clark, Jr., Dec. 11, 2015

Clark J. Second: Letter from James T. Clark, Jr., Dec. 15, 2015

Clark K.: Letter from Kyle Clark, Dec. 14, 2015

Cobb: Letter from Jeffrey Cobb, Feb. 13, 2016

Coe: Letter from Charles R. Coe, Dec. 10, 2015

Colbert: Letter from Stephen Colbert, Dec. 10, 2015

Cole: Letter from Rebecca A. Cole, Mar. 20, 2016

Conklin: Letter from J.J. Conklin, Jan. 5, 2016

Connolly: Letter from Francis A. Connolly, III, Feb. 2, 2016

Cook: Letter from Aran Cook, Dec. 14, 2015

Copelan: Letter from Julie Copelan, Feb. 22, 2016

Cowen: Letter from Jeffrey M. Solomon, President, Daniel Charney, Managing Director and Head of Equities, and John Cosenza, Managing Director & Head of Electronic Trading, Cowen Group, Inc., Nov. 2, 2015

Cox First: Letter from Steven M. Cox, Dec. 10, 2015

Cox Second: Letter from Steven M. Cox, Feb. 2, 2016

CPMG: Letter from John E. Bateman, Chief Operating Officer, CPMG, Inc., Jan. 5, 2016

Crespo: Letter from Pablo Crespo, Dec. 10, 2015

Cull: Letter from Stephanie Cull, Mar. 31, 2016

Curtin: Letter from Kim Ann Curtin, Jan. 15, 2016

D.B.: Letter from D.B., Apr. 5, 2016

Dall: Letter from Cindy Dall, May 11, 2016

Daniels: Letter from Larry Daniels, Jan. 23, 2016

Deccristifaro: Letter from Aj Deccristifaro, Feb. 21, 2016

Delaney: Letter from Stephen W. Delaney, Jan. 1, 2016

Demos: Letter from Mark Demos, Dec. 16, 2015

DePoorter: Letter from Walter DePoorter, Dec. 14, 2015

DeVito: Letter from David J. DeVito, Dec. 10, 2015

Direct Match: Letter from Jim Greco, CEO, Direct Match, Feb. 24, 2016

Discepola: Letter from Domenico Discepola, Dec. 11, 2015

Dole: Letter from William Dole, Dec. 14, 2015

Doran: Letter from Brendan Doran, Dec. 13, 2015

Dover: Letter from Roland Dover, Jan. 31, 2016

Doyle L.: Letter from Larry Doyle , Dec. 14, 2015

Doyle T.: Letter from Thomas Doyle, Jan. 21, 2016

Duffy: Letter from Representative Sean P. Duffy, Jan. 21, 2016

Dukelow: Letter from James S. Dukelow, Jr., Dec. 18, 2015

Dwork: Letter from Nicholas Dwork, Jan. 27, 2016

Eric K.: Letter from Eric K., Feb. 16, 2016

Estate: Letter from Carlos J. Estate, Feb. 28, 2016

Eustace: Letter from Mark Eustace, Dec. 13, 2015

Farallon Capital Management: Letter from Andrew J.M. Spokes, Managing Partner, Farallon Capital Management, LLC, Mar. 2, 2016

Feldscher: Letter from Stephen Feldscher, Mar. 22, 2016

Ferber: Letter from William Ferber, May 7, 2016

fi360: Letter from Blaine F. Aikin, Executive Chairman, J. Richard Lynch, Director, and Duane R. Thompson, Senior Policy Analyst, fi360, Inc., Jan. 5, 2016

FIA First: Letter from Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group, Nov. 6, 2015

FIA Second: Letter from Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group, Mar. 3, 2016

Fields: Letter from Byron Fields, Jan. 13, 2016

Filabi: Letter from Azish Filabi, Feb. 3, 2016

Finley: Letter from Ted Finley, Dec. 14, 2015

Franklin Templeton Investments: Letter from Madison S. Gulley, EVP, Head of Investment Management Strategic Services, William J. Stephenson IV, SVP, Global Head of Trading, David A. Lewis, SVP, Head of Americas Trading, Benjamin Batory, SVP, Head of U.S. Trading, and Craig S. Tyle, EVP, General Counsel, Franklin Templeton Investments, Feb. 12, 2016

Franz: Letter from John P. Franz, Feb. 25, 2016

Froehlich: Letter from Paul Froehlich, Dec. 10, 2015

Gai: Letter from Robert Gai, Feb. 24, 2016

Gannon: Letter from James Gannon, Dec. 10, 2015

Geduld: Letter from E.E. Geduld, Dec. 18, 2015

Gibbons P.: Letter from Peter Gibbons, Dec. 10, 2015

Gibbons T.: Letter from Toni Gibbons, Dec. 14, 2015

Gibson Dunn: Letter from Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, May 19, 2016

Giguere: Letter from John Giguere, Dec. 14, 2015

Gilliland and Goodlander: Letter from Jason Gilliland and Maggie Goodlander, Apr. 14, 2016

Givehchi: Letter from Mehran Givehchi, Dec. 14, 2015

Glatt: Letter from Alex Glatt, Dec. 14, 2015

Glennon: Letter from Allan Glennon, Dec. 10, 2015

Gloy First: Letter from Alexander Gloy, Dec. 10, 2015

Gloy Second: Letter from Alexander Gloy, Dec. 15, 2015

Godden: Letter from Daniel Godden, May 31, 2016

Godonis: Letter from Anthony Godonis, Jan. 28, 2016

Gold: Letter from James J. Gold, Jan. 9, 2016

Goldman Sachs: Letter from Paul M. Russo, Managing Director, Equities, Goldman, Sachs & Co., Jan. 12, 2016

Gordon: Letter from Doug Gordon, Dec. 13, 2015

Goswami: Letter from Binoos Goswami, Jan. 24,

2016

Gough: Letter from William S. Gough, Jan. 22, 2016

Grant: Letter from John Grant, Dec. 13, 2015

Green: Letter from Jordan Green, Feb. 9, 2016

Grey: Letter from Richard M. Grey, Feb. 23, 2016

Guertin: Letter from Robert Guertin, Dec. 11, 2015

Hall: Letter from Lori Hall, Dec. 13, 2015

Hamadyk: Letter from Zach Hamadyk, Dec. 19, 2015

Hamlin: Letter from David Hamlin, Dec. 19, 2015

Hammermill: Letter from Winston Hammermill, Jan. 22, 2016

Hammond: Letter from Shaun Hammond, Feb. 21, 2016

Hand: Letter from David A. Hand, Jan. 27, 2016

Harbort: Letter from Timothy S. Harbort, Dec. 11, 2015

Harrison: Letter from Daniel Harrison, Dec. 19, 2015

Hartley: Letter from Kirk T. Hartley, Dec. 13, 2015

Hasan: Letter from Nidal Hasan, Dec. 17, 2015

Hawley: Letter from James Hawley, Dec. 14, 2015

Haydel: Letter from Christopher J. Haydel, Dec. 11, 2015

Healthy Markets: Letter from David Lauer, Chairman, Healthy Markets Association, Nov. 6, 2015

Hedgepath: Letter from Brandon D. Hedgepath, Dec. 11, 2015

Henderson First: Letter from Hazel Henderson, President and Founder, Ethical Markets Media, Jan. 5, 2016

Henderson Second: Letter from Hazel Henderson, President and Founder, Ethical Markets Media, Jan. 5, 2016

Henderson Third: Letter from Hazel Henderson, President and Founder, Ethical Markets Media, Jan. 5, 2016

Henry: Letter from Patrick Henry, Dec. 19, 2015

Hibernia: Letter from Emma Hibernia, Dec. 23, 2015

Hiester: Letter from Christopher Hiester, Dec. 14, 2015

Holden First: Letter from C.M. Holden, Dec. 13, 2015

Holden Second: Letter from C.M. Holden, Dec. 14, 2015

Hollinger: Letter from Nancy Hollinger, Feb. 8, 2016

Hooper: Letter from Donald C. Hooper, Feb. 22, 2016

Hovanec First: Letter from Ron Hovanec, Dec. 10, 2015

Hovanec Second: Letter from Ron Hovanec, Dec. 14, 2015

Hovanec Third: Letter from Ron Hovanec, Feb. 1, 2016

Hovanec Fourth: Letter from Ron Hovanec, Feb. 2, 2016

Hovanec Fifth: Letter from Ron Hovanec, Feb. 25, 2016

Hovanec Sixth: Letter from Ron Hovanec, Feb. 26, 2016

Hovanec Seventh: Letter from Ron Hovanec, Mar. 9, 2016

Howarth: Letter from Charles Howarth, Dec. 10, 2015

Hudson River Trading First: Letter from Adam Nunes, Head of Business Development, Hudson River Trading LLC, Dec. 4, 2015

Hudson River Trading Second: Letter from Adam Nunes, Head of Business Development, Hudson River Trading LLC, Jan. 7, 2016

Huff: Letter from TE Huff, Dec. 15, 2015

Hunsacker: Letter from Derick Hunsacker, Dec. 11, 2015

Ianni: Letter from Mike Ianni, Dec. 10, 2015

Ierardo First: Letter from Mark Ierardo, Dec. 11, 2015

Ierardo Second: Letter from Mark Ierardo, Dec. 16, 2015

Instinet: Letter from John Comerford, Executive Managing Director, Global Head of Trading Research, Instinet Holdings Incorporated, Mar. 2, 2016

Israel: Letter from Representative Steve Israel, June 16, 2016

Iyer First: Letter from Sree Iyer, Dec. 14, 2015

Iyer Second: Letter from Sree Iyer, Dec. 20, 2015

Jacobson: Letter from Cameron Jacobson, Dec. 10, 2015

James G.: Letter from James G., Dec. 15, 2015

Janson: Letter from Susan C. Janson, Feb. 4, 2016

Jefferies: Letter from Jefferies LLC, Jan. 14, 2016

Jicmon: Letter from Laurentiu I. Jicmon, Ph.D., Dec. 10, 2015

John J.: Letter from Jacob John, Mar. 17, 2016

John M.: Letter from Mike John, Dec. 10, 2015

John P.: Letter from Pramod John, Ph.D., Jan. 29, 2016

Johnson: Letter from Robert S. Johnson, May 27, 2016

Jon D.: Letter from Jon D., Dec. 23, 2015

Jones C.: Letter from Charles M. Jones, Robert W. Lear Professor of Finance and Economics, Columbia Business School, Mar. 2, 2016

Jones S.: Letter from Sam F. Jones, Dec. 15, 2015

Joshi: Letter from Kishore A. Joshi, Feb. 5, 2016

Julos: Letter from Jena A. Julos, Dec. 16, 2015

Jurgens: Letter from Daniel T. Jurgens, Dec. 10, 2015

Kaeuper: Letter from Steve Kaeuper, Dec. 19, 2015

Kara: Letter from Faizal Kara, Dec. 14, 2015

Katz: Letter from Sondra Katz, Dec. 17, 2015

Kaye: Letter from Greg Kaye, Dec. 15, 2015

Kearney: Letter from Michael Kearney, Dec. 14, 2015

Keblish First: Letter from Peter Keblish, Dec. 9, 2015

Keblish Second: Letter from Peter Keblish, Dec. 10, 2015

Keenan: Letter from Chris Keenan, Dec. 18, 2015

Kelly: Letter from John A. Kelly, Dec. 14, 2015

Kendall: Letter from Jack R. Kendall, Feb. 4, 2016

<i>Kennedy First:</i>	Letter from Matthew Kennedy, Dec. 10, 2015
<i>Kennedy Second:</i>	Letter from Matthew Kennedy, Dec. 16, 2015
<i>Kenyon:</i>	Letter from Andrew Kenyon, Dec. 14, 2015
<i>Kiely:</i>	Letter from Philip Kiely, Mar. 17, 2016
<i>Kiessling:</i>	Letter from David Kiessling, Dec. 14, 2015
<i>Kim:</i>	Letter from Seong-Han Kim, Ph.D., Dec. 16, 2015
<i>King First:</i>	Letter from Toby King, Dec. 10, 2015
<i>King Second:</i>	Letter from Toby King, Dec. 13, 2015
<i>King Third:</i>	Letter from Toby King, Dec. 31, 2015
<i>AK Financial Engineering Consultants First:</i>	Letter from Abraham Kohen, President, AK Financial Engineering Consultants LLC, Mar. 11, 2016
<i>AK Financial Engineering Consultants Second:</i>	Letter from Abraham Kohen, President, AK Financial Engineering Consultants LLC, Apr. 25, 2016
<i>Lafayette:</i>	Letter from Marcus Lafayette, Dec. 28, 2015
<i>Lancastle:</i>	Letter from Neil M. Lancastle, Senior Lecturer, Accounting and Finance, De Montfort University, Dec. 21, 2015
<i>Landis Kenesaw:</i>	Letter from Kenesaw Landis, Feb. 9, 2016
<i>Landis Kenneth:</i>	Letter from Kenneth Landis, Jan. 1, 2016
<i>Lantry:</i>	Letter from Jackie Lantry, Dec. 14, 2015
<i>Larson:</i>	Letter from Brian C. Larson, Dec. 22, 2015

Laub: Letter from Craig B. Laub, Dec. 18, 2015

Lazarus: Letter from Steve Lazarus, Dec. 14, 2015

Lee F.: Letter from Francis Lee, Jan. 8, 2016

Lee S.: Letter from Sang Lee, Dec. 10, 2015

Leeson: Letter from Brock Leeson, Jan. 15, 2016

Leff: Letter from Bruce Leff, Dec. 26, 2015

Leino: Letter from Scott Leino, Dec. 29, 2015

Leuchtkafer First: Letter from R.T. Leuchtkafer, Nov. 20, 2015

Leuchtkafer Second: Letter from R.T. Leuchtkafer, Feb. 19, 2016

Levi: Letter from J.D. Levi, Dec. 11, 2015

Levy: Letter from Steven A. Levy, Dec. 14, 2015

Lewis: Letter from Michael Lewis, Dec. 12, 2015

Lewkovich: Letter from Robert Lewkovich, Dec. 14, 2015

Liquidnet: Letter from Seth Merrin, Founder and CEO, Liquidnet Holdings, Feb. 23, 2016

Loh: Letter from Roger Loh, Jan. 11, 2016

Long: Letter from Richard Long, Jan. 15, 2016

Loomis: Letter from David Loomis, Dec. 16, 2015

Luce First: Letter from Steve Luce, Dec. 10, 2015

Luce Second: Letter from Steve Luce, Dec. 12, 2015

Luoma: Letter from Jeremiah Luoma, Professor of Economics, Finlandia University, Dec. 17, 2015

Lupinski: Letter from Ryan Lupinski, Jan. 22, 2016

Lynch: Letter from Representative Stephen F. Lynch, Jan. 8, 2016

Lysko: Letter from Greg Lysko, May 21, 2016

Mack: Letter from Carol Mack, Jan. 31, 2016

MacLeod: Letter from Neil MacLeod, Dec. 17, 2015

Mannheim: Letter from Lou Mannheim, Dec. 12, 2015

Manushi First: Letter from Ektrit Manushi, Dec. 24, 2015

Manushi Second: Letter from Ektrit Manushi, Dec. 29, 2015

Maqbool: Letter from Massoud Maqbool, May 26, 2016

Markit First: Letter from David Weisberger, Managing Director, Markit, Dec. 23, 2015

Markit Second: Letter from David Weisberger, Managing Director, Markit, Feb. 16, 2016

Marquez: Letter from Thelma Marquez, Dec. 14, 2015

McCannon: Letter from Xavier McCannon, Dec. 13, 2015

McCarty: Letter from David McCarty, Dec. 16, 2015

McCloskey: Letter from Michael J. McCloskey, Esq., Dec. 14, 2015

McGeer: Letter from Jim McGeer, Dec. 10, 2015

McGeorge: Letter from Don W. McGeorge, Jan. 4, 2016

McGowan: Letter from D.S. McGowan, Dec. 10,

2015

McHugh: Letter from James McHugh, Dec. 17, 2015

Meeks: Letter from Thomas Meeks, Dec. 10, 2015

Mehlmann: Letter from Tino Mehlmann, Dec. 10, 2015

Melin: Letter from Mark H. Melin, Dec. 11, 2015

Meskill: Letter from Duncan S. Meskill, Dec. 10, 2015

Metzger: Letter from Andrew Metzger, Mar. 5, 2016

Meyer: Letter from James Meyer, Dec. 10, 2015

Michail: Letter from Theocharis Michail, Mar. 7, 2016

Michel: Letter from Daniel Michel, Feb. 22, 2016

Millard: Letter from Sean Millard, Dec. 10, 2015

Milligan: Letter from Christopher Milligan, Dec. 23, 2015

Modern Markets: Letter from William R. Harts, CEO, Modern Markets Initiative, Dec. 3, 2015

ModernIR: Letter from Tim Quast , President, ModernNetworks IR LLC, Dec. 7, 2015

Mollner: Letter from Terry Mollner, Jan. 7, 2016

Montes: Letter from David J. Montes, Dec. 15, 2015

Moore: Letter from Dylan Moore, Feb. 28, 2016

Morgan: Letter from Daniel Morgan, Dec. 15, 2015

Morris: Letter from Kelly Morris, Apr. 9, 2016

Morrow: Letter from Benjamin B. Morrow, Jan. 22, 2016

Moses: Letter from Matt Moses, Dec. 15, 2015

Mulson: Letter from Danny Mulson, Dec. 15, 2015

Murphy: Letter from Ann Murphy, Associate Dean, Undergraduate Studies, School of Business, Stevens Institute of Technology, Nov. 6, 2015

Murray: Letter from Lynn G. Murray, Dec. 29, 2015

Nagel: Letter from Jeff Nagel, Jan. 8, 2016

Nakamura: Letter from Tomohiko Nakamura, Feb. 20, 2016

Nanex First: Letter from Eric S. Hunsader, CEO, Nanex, LLC, Dec. 14, 2015

Nanex Second: Letter from Eric S. Hunsader, CEO, Nanex, LLC, Jan. 20, 2016

Nanex Third: Letter from Eric S. Hunsader, CEO, Nanex, LLC, Jan. 25, 2016

Nasca: Letter from Mark J. Nasca, Jan. 8, 2016

Nasdaq First: Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, Inc., Nov. 10, 2015

Nasdaq Second: Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, Inc., Jan. 29, 2016

Nasdaq Third: Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, Inc., Mar. 16, 2016

Navari First: Letter from David Navari, Oct. 26, 2015

Navari Second: Letter from David Navari, Dec. 15, 2015

Navari Third: Letter from David Navari, Feb. 22, 2016

Newman: Letter from Lance Newman, Dec. 15, 2015

Nicholas: Letter from Patrick Nicholas, Apr. 20, 2016

Nicolas F.: Letter from Nicolas F., Dec. 10, 2015

Nispel First: Letter from Mark Nispel, Ph.D., Dec. 10, 2015

Nispel Second: Letter from Mark Nispel, Ph.D, Dec. 14, 2015

Nixon: Letter from Kasumi Nixon, Jan. 14, 2016

Noack: Letter from Jared Noack, Dec. 12, 2015

Noakes: Letter from Nate Noakes, Dec. 15, 2015

Norges Bank: Letter from Oeyvind G. Schanke, CIO, Asset Strategies, and Simon Emrich, Lead Analyst, Norges Bank Investment Management, Dec. 16, 2015

Nye: Letter from Joseph J. Nye, Dec. 15, 2015

NYSE First: Letter from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, Nov. 12, 2015

NYSE Second: Letter from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, Feb. 8, 2016

NYSE Third: Letter from Elizabeth King, General Counsel & Secretary, New York Stock Exchange, Apr. 18, 2016

NYSE Fourth: Letter from Elizabeth King, General Counsel & Secretary, New York Stock Exchange, Apr. 27, 2016

NYSTRS: Letter from Thomas Lee, Executive Director and Chief Investment Officer,

and Fred Herrmann, Managing Director of Public Equities, New York State Teachers' Retirement System, Feb. 26, 2016

- O'Connor* Letter from Peter O'Connor, Dec. 14, 2015
- O'Malley:* Letter from William J. O'Malley, Feb. 5, 2016
- O'Neill:* Letter from Robert O'Neill, Dec. 19, 2015
- Odom:* Letter from Terry Odom, Feb. 23, 2016
- Olson:* Letter from Greg Olson, Dec. 14, 2015
- Oltean:* Letter from Ieronim Oltean, Dec. 10, 2015
- Oorjitham:* Letter from Jeyan D. Oorjitham, Jan. 30, 2016
- Oppenheimer Funds:* Letter from Krishna Memant, Executive Vice President & Chief Investment Officer, George R. Evans, Senior Vice President & Chief Investment Officer of Equities, Keith Spencer, Head of Equity Trading & Senior Vice President, and John Boydell, Manager of Equity Trading & Vice President, OppenheimerFunds, Inc., Nov. 5, 2015
- Papas:* Letter from Gregory P. Papas, Dec. 16, 2015
- Park:* Letter from Danielle Park, Dec. 10, 2015
- Parks:* Letter from Gaelle Parks, Dec. 14, 2015
- Patton C.:* Letter from Charles D. Patton, Dec. 14, 2015
- Patton H.D.:* Letter from H.D. Patton, Dec. 14, 2015
- Paulikot:* Letter from Cameron F. Paulikot, Jan. 12,

2016

Pavkovic: Letter from Ivan Pavkovic, Dec. 17, 2015

PDQ Enterprises: Letter from D. Keith Ross, Jr., Chairman and CEO, PDQ Enterprises, LLC, Mar. 16, 2016

Peck: Letter from Bob Peck, Dec. 30, 2015

Penkman: Letter from David Penkman, Dec. 14, 2015

Peppers: Letter from Emmet Peppers, Dec. 10, 2015

Phelps: Letter from Robert C. Phelps, Dec. 13, 2015

Philip: Letter from Richard Philip, Ph.D., Lecturer of Finance, University of Sydney, Feb. 9, 2016

Phillips: Letter from Jeff Phillips, Dec. 17, 2015

Pierce: Letter from William E. Pierce, Dec. 15, 2015

Place: Letter from James C. Place, Mar. 16, 2016

Plant: Letter from Phillip M. Plant, Jan. 8, 2016

Poots: Letter from Emanuel Poots, Dec. 20, 2015

Powell: Letter from David R. Powell, Jan. 5, 2016

Pratt: Letter from William Pratt, Dec. 11, 2015

Prihodka: Letter from Jonathan M. Prihodka, Feb. 8, 2016

Prosser G.: Letter from Gabriel Prosser, Feb. 18, 2016

Prosser W.: Letter from Warren Prosser, Feb. 2, 2016

Proto: Letter from Paul E. Proto, Feb. 3, 2016

PSRS/PEERS: Letter from Craig A. Husting, Chief Investment Officer, Public School & Education Employee Retirement Systems of Missouri, Mar. 22, 2016

Punt: Letter from Ryan L. Punt, Dec. 10, 2015

Quinlan: Letter from Michael Quinlan, Dec. 13, 2015

Rademaker: Letter from Jaap Rademaker, Dec. 23, 2015

Rainbeau: Letter from David Rainbeau, Dec. 10, 2015

Raju: Letter from Muralidhara Raju, Mar. 1, 2016

Ramirez First: Letter from Joe Ramirez, Dec. 10, 2015

Ramirez Second: Letter from Joe Ramirez, Dec. 12, 2015

Rayner: Letter from Geoff Rayner, Jan. 14, 2016

Reich: Letter from Kyle Reich, Dec. 11, 2015

Renterman: Letter from Lemco Renterman, Dec. 14, 2015

Reynoso: Letter from J.W. Reynoso, Dec. 10, 2015

Robeson: Letter from Paul Robeson, Jan. 8, 2016

Romani: Letter from Marina Romani, Mar. 17, 2016

Romer: Letter from Chris Romer, Mar. 25, 2016

Rosson: Letter from Joseph C. Rosson, Sr., Dec. 14, 2015

Rothschild: Letter from Evan Rothschild, Dec. 14, 2015

Rowley: Letter from Robert P. Rowley, Jan. 5,

2016

- Rundle:* Letter from John B. Rundle, Professor of Physics, University of California, Davis, Dec. 31, 2015
- Sadera:* Letter from Ernest Sadera, Dec. 16, 2015
- Sakato:* Letter from Stacius Sakato, Feb. 15, 2016
- Sanitate:* Letter from Frank Sanitate, Dec. 14, 2015
- Sarly:* Letter from Alex E. Sarly, Mar. 18, 2016
- Scalici:* Letter from Giovanni Scalici, Dec. 11, 2015
- Schlinger:* Letter from Charles M. Schlinger, Dec. 15, 2015
- Schroeder M.:* Letter from Michael A. Schroeder, Jan. 8, 2016
- Schroeder R. First:* Letter from Roy Schroeder, Dec. 11, 2015
- Schroeder R. Second:* Letter from Roy Schroeder, Dec. 13, 2015
- Schroeder R. Third:* Letter from Roy Schroeder, Dec. 14, 2015
- Schwarz:* Letter from Robert Schwarz, Jan. 8, 2016
- Schwefel:* Letter from Scott Schwefel, Dec. 11, 2015
- Scott:* Letter from Representative David Scott, Feb. 1, 2016
- Seabolt:* Letter from Louie H. Seabolt, Feb. 22, 2016
- Seal:* Letter from Matthew Seal, Dec. 11, 2015
- Seals:* Letter from Devin F. Seals, Dec. 19, 2015

Secrist: Letter from Kyle Secrist, Dec. 9, 2015

Sethi: Letter from Rajiv Sethi, Professor of Economics, Barnard College, Columbia University, Jan. 3, 2016

Sevcik: Letter from Karel Sevcik, Dec. 14, 2015

Seward: Letter from William Seward, Jan. 3, 2016

Shamess: Letter from Albie Shamess, Dec. 11, 2015

Shapurjee: Letter from Rohintan Shapurjee, Feb. 2, 2016

Shatto First: Letter from Suzanne Shatto, Oct. 7, 2015

Shatto Second: Letter from Suzanne Shatto, Nov. 16, 2015

Shatto Third: Letter from Suzanne Shatto, Dec. 7, 2015

Shatto Fourth: Letter from Suzanne Shatto, Jan. 26, 2016

Shaw: Letter from Robert Shaw, Jan. 21, 2016

Sherman: Letter from Representative Brad Sherman, Mar. 7, 2016

Sillcox: Letter from Robert L. Sillcox, Dec. 14, 2015

Silva: Letter from Lucas S. Silva, Dec. 14, 2015

Silver: Letter from David Silver, Feb. 8, 2016

Simonelis: Letter from Alex Simonelis, Sep. 22, 2015

Sinclair: Letter from Karen Sinclair, Mar. 15, 2016

Sjoding: Letter from David W. Sjoding, Mar. 8, 2016

Slosberg: Letter from Daniel D. Slosberg, Dec. 13,

2015

Smith C.: Letter from Cale Smith, Jan. 23, 2016

Smith G.: Letter from Gennifer Smith, Feb. 7, 2016

Smith J.: Letter from James S. Smith, Dec. 10, 2015

Smith N.: Letter from Nate Smith, Mar. 10, 2016

Southeastern: Letter from O. Mason Hawkins, Chairman & CEO, Richard W. Hussey, Principal & COO, Deborah L. Craddock, Principal & Head of Trading, Jeffrey D. Engelberg, Principal & Senior Trader, and W. Douglas Schrank, Principal & Senior Trader, Southeastern Asset Management, Inc., Sep. 30, 2015

Spear: Letter from Thomas C. Spear, Feb. 2, 2016

Squires: Letter from Anthony Squires, Dec. 18, 2015

Stanton: Letter from Carol A. Stanton, Feb. 22, 2016

Stearns: Letter from Ian Stearns, Dec. 14, 2015

Stehura: Letter from Tom Stehura, Feb. 2, 2016

Stein J.: Letter from Jonathan Stein, Dec. 31, 2015

Stein N.: Letter from Nicholas C. Stein, Jan. 6, 2016

Steinham: Letter from Jackson Steinham, Dec. 11, 2015

Stephens: Letter from Barry Stephens, Dec. 10, 2015

Stevenin: Letter from Cynthia Stevenin, Dec. 10, 2015

Stevens E.: Letter from Eric J. Stevens, Dec. 13, 2015

Stevens J.: Letter from John Stevens, Dec. 27, 2015

Stevens X.: Letter from Xavier Stevens, Dec. 9, 2015

Stoesser: Letter from James C. Stoesser, Dec. 14, 2015

Stork: Letter from Benjamin M. Stork, Mar. 27, 2016

Street: Letter from Carol Street, Feb. 10, 2016

Strom: Letter from Marlys Strom, Dec. 18, 2015

Strongilis: Letter from Ioannis D. Strongilis, Dec. 12, 2015

Sullivan: Letter from Brian S. Sullivan, Jan. 3, 2016

Summers: Letter from Timothy Summers, Dec. 13, 2015

T. Rowe Price: Letter from Clive Williams, Vice President and Global Head of Trading, Andrew M. Brooks, Vice President and Head of U.S. Equity Trading, and Christopher P. Hayes, Vice President and Legal Counsel, T. Rowe Price Associates, Inc., Dec. 24, 2015

TABB: Letter from Larry Tabb, CEO, TABB Group, Nov. 23, 2015

Themis First: Letter from Sal Arnuk and Joe Saluzzi, Themis Trading LLC, Nov. 3, 2015

Themis Second: Letter from Sal Arnuk and Joe Saluzzi, Themis Trading LLC, Jan. 27, 2016

Themis Third: Letter from Sal Arnuk and Joe Saluzzi, Themis Trading LLC, Mar. 10, 2016

Thielmann: Letter from Todd Thielmann, Dec. 20, 2015

Thomas: Letter from Jon Thomas, Dec. 19, 2015

Thompson: Letter from Johnna S. Thompson, Dec. 18, 2015

Tidwell: Letter from Leslie A. Tidwell, Jan. 22, 2016

Tondreau: Letter from Claire L. Tondreau, Dec. 14, 2015

Trainor: Letter from Daniel Trainor, Dec. 14, 2015

Trirogoff: Letter from Ed Trirogoff, Mar. 28, 2016

TRS: Letter from Britt Harris, Chief Investment Officer, and Bernie Bozzelli, Head Trader, The Teacher Retirement System of Texas, Jan. 13, 2016

Turner: Letter from Kyle Turner, Dec. 13, 2015

Tyson: Letter from Jon Tyson, Ph.D., May 11, 2016

Upson: Letter from James E. Upson, Ph.D., Associate Professor of Finance, University of Texas at El Paso, Jan. 14, 2016

Vaughan: Letter from James Vaughan, Dec. 10, 2015

Verchere: Letter from David Verchere, Dec. 10, 2015

Verret: Letter from J.W. Verret, Assistant Professor of Law, George Mason University School of Law, Nov. 20, 2015

Virtu: Letter from Douglas A. Cifu, Chief Executive Officer, Virtu Financial, Nov. 6, 2015

Walworth: Letter from Andrew Walworth, Mar. 11, 2016

Warneka: Letter from Patrick J. Warneka, Dec. 15, 2015

Warren: Letter from Joseph Warren, Dec. 13, 2015

Watson: Letter from Lane C. Watson, Dec. 15, 2015

Wayne: Letter from Anthony Wayne, Dec. 18, 2015

Weldon First: Letter from Kevin J. Weldon, Dec. 15, 2015

Weldon Second: Letter from Kevin M. Weldon, Apr. 20, 2016

Wichman: Letter from Paul K. Wichman, Dec. 17, 2015

Wilcox: Letter from Richard C. Wilcox, Dec. 13, 2015

Williams: Letter from Bruce A. Williams, Dec. 10, 2015

Wills: Letter from Dennis Wills, Dec. 14, 2015

Wolberg: Letter from Jay Wolberg, Dec. 11, 2015

Wolfe: Letter from Brian A. Wolfe, Assistant Professor of Finance, The State University of New York, University at Buffalo School of Management, Feb. 12, 2016

Workman: Letter from Michael R. Workman, Jan. 10, 2016

Wright: Letter from Fred W. Wright, Dec. 16, 2015

WSIB/OST: Letter from Marcie Frost, Chair, Washington State Investment Board and James L. McIntire, Washington State Treasurer/Board Member, May 5, 2016

Yeoumans: Letter from Dr. Jerry Yeoumans, Jan. 3, 2016

Young P.: Letter from Patrick L. Young, Nov. 2, 2015

Young R.: Letter from Robert Young, Apr. 2, 2016

Zevin Asset Management: Letter from Robert Zevin, Chairman, Zevin Asset Management LLC, Jan. 8, 2016

Zoeger: Letter from Linda Zoeger, Feb. 8, 2016