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November 6, 2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Release No. 34-75925; File No. 10-222
Investors' Exchange, LLC; Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934

Dear Mr. Fields:

The FIA Principal Traders Group ("FIA PTG") appreciates the opportunity to comment on Investors' Exchange, LLC's ("IEX" or the "Exchange") application for registration as a National Securities Exchange ("Application").[1] While FIA PTG welcomes innovation in the markets and recognizes the important role of competition among trading venues, we are concerned about (1) IEX's proposal to give protected status to its quotes despite their being subject to an intentional access delay, (2) the introduction of pegged order types with a speed advantage over other order types, and (3) IEX's affiliated broker-dealer not being subject to the access delay in the same way as other non-affiliated broker-dealers. The Commission should not approve the IEX application until IEX (1) either amends its proposed rules to provide that IEX quotes are not protected or eliminates the proposed intentional delay in accessing the IEX order book, (2) eliminates the speed advantage of pegged orders, and (3) levels the playing-field between its own routing broker-dealer and other members.

FIA PTG

FIA PTG is an association of more than 25 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and

[1] https://www.sec.gov/rules/other/2015/investors-exchange-form-1.htm

invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.[2]

Intentionally Delayed Quotes Do not Qualify for Protected Status under Rule 611 of Regulation NMS

The Application provides that all connectivity to the Exchange will be provided by a "Point of Presence" ("IEX POP") of the Exchange that subjects participants to 350 microseconds of latency from the IEX POP to the IEX trading system, and a symmetrical 350 microseconds of latency from the IEX trading system back to the IEX POP (the "IEX access delay").[3] For most activities on IEX, this would impose a minimum total round trip latency of 700 microseconds for a participant to get an order to the IEX trading system and receive notification of an execution or other order event back from the IEX trading system. While FIA PTG does not take issue with the existence of the IEX access delay, *per se*, we respectfully submit that the intentional latency does not comply with Rule 611 of Regulation NMS and as such, these purposely delayed quotations should not be considered protected quotes.

When the Securities and Exchange Commission ("Commission") adopted Regulation NMS, it stated that "to be protected [under Rule 611] a quotation must be immediately and automatically accessible."[4] The Commission further explained that "[t]he term 'immediate' precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation."[5] The IEX access delay is an intentional delay of access to a quotation. An intentional delay – such as the IEX access delay – means that the quote is not immediately and automatically accessible because IEX *could* make the quote immediately and automatically accessible but has *chosen* not to do so. Therefore, the IEX access delay should preclude the IEX quotes from being deemed "protected quotes."

At least one other U.S. exchange proposed instituting an intentional delay in the execution time of marketable orders and withdrew that proposal shortly after it was published for comment.[6] This proposal acknowledged that the exchange's quotations

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[2] *See* https://ptg.fia.org/keywords/equity-market-structure
[3] *See* Exhibit E, Application, available at: https://www.sec.gov/rules/other/2015/investors-exchange-form-1-exhibits-a-e.pdf#page=45.
[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005) ("Regulation NMS Adopting Release).
[5] *See id.* Prohibiting intentional delays was part of a line of actions intended to improve fairness and transparency in markets. There has been a long history of market participants slowing down their trade reporting in order to give advantages to privileged insiders and the Commission rightfully has deemed such intentional delays to be against the public interest.
[6] *See* Securities Exchange Act Release No. 67680 (Aug. 17, 2012) (SR-PHLX-2012-106) (proposing "five millisecond delay in the execution time for marketable orders on NASDAQ OMX PSX"); Securities

would be deemed "manual quotations" under Regulation NMS as a result of this intentional delay.[7] While the proposed delay (5 milliseconds) was considerably longer than the IEX's access delay, according to the Regulation NMS Adopting Release, intent is what matters here, not duration. Similarly, the Alpha Exchange in Canada has proposed to intentionally delay inbound orders and cancellations ranging from 1 to 3 milliseconds and such quotes will not be considered protected quotes by the Ontario Securities Commission.[8] It is clear that an intentional delay in accessing the IEX trading system should preclude IEX from having protected quotes under the plain language of Regulation NMS.

Moreover, deeming IEX quotes to be protected despite the IEX access delay would harm the markets. If the IEX quotes are deemed protected, market participants would be required to route orders to IEX whenever IEX shows the best bid and offer. Quotes on IEX, however, will often be stale because of the IEX access delay and this would lead to lower fill rates and inferior executions. For example, as noted by one commentator, if all the exchanges have a bid-offer of $10.00/$10.02 and the market moves to $9.99/$10.01, all of the other exchanges, except IEX, would immediately change their quotes.[9] For at least 350 microseconds, however, IEX would still display a bid-offer of $10.00/$10.02. The $10.00 bid on IEX may disappear after 350 microseconds, but if a market sell order comes in, the order would be required to be sent to IEX, since the national best bid is still displayed at IEX. The order would be delayed and by the time the cancel message is returned to the sender (again passing through a 350 microsecond intentional delay) the order may no longer be able to be executed at even $9.99. As such, IEX's access delay would harm market transparency and degrade the value of the NBBO.

Similarly, due to the prohibition on displaying locked and crossed markets, IEX would effectively freeze the entire market for at least 350 microseconds in many cases if its quotes were deemed to be protected. For example, if the NBBO including IEX is $10.00/$10.01 and the market is in the process of moving to $9.99/$10.00, other exchanges could not move to the new price without locking the IEX quote. We believe that the IEX access delay would also result in the appearance of more locked and crossed markets as firms that send ISOs [10] to IEX would display quotes on other exchanges that appear to lock or cross the latent IEX quote. Many firms do not use ISOs and would thus have to wait at least 350 microseconds for the IEX quote to move (or not).

Exchange Act Release No. 67780 (Sept. 5, 2012) (SR-PHLX-2012-106) (indicating that PHLX withdrew its proposal seven days after the notice was published).

[7] *See id.*

[8] *See* ITG Canada Sales and Trading: The Alpha Conundrum.

[9] *See* Levine, Matt, "The 'Flash Boys' Exchange is Growing Up," *Bloomberg View* (Sept. 16, 2015).

[10] Regulation NMS Rule 600(b)(30) defines an intermarket sweep order as one or more limit orders routed simultaneously to execute against the full displayed size of all protected quotes at a price level.

This could be particularly problematic during periods of high volatility or during sharp market moves (such as May 6, 2010 or August 24, 2015) in which rapid repetition of such freezing behavior across multiple instruments could be expected to interfere with market stability.
The Commission should also consider the impact of the IEX access delay on pegging orders at other venues. Any exchange or ATS that offers its users logic to peg their orders relative to the NBBO (including IEX) would peg those orders to the latent IEX quote. Ironically, by pegging to the latent IEX quote, users of other trading venues would be subject to the exact condition that the IEX access delay was designed to prevent. Other market participants would have the ability to trade with the order pegged to IEX at a stale price just prior to the price updating. We believe that this would effectively require other exchanges and ATSs to create new order types designed to peg to all quotes excluding IEX.

IEX Should Not be Permitted to Give Pegged Orders a Speed Advantage

IEX has also proposed three pegged order types in its Application: primary pegged orders, midpoint pegged orders and discretionary pegged orders. The pegged order types use direct market data feeds to re-price the orders without the IEX access delay.

By permitting IEX to impose an intentional delay on incoming orders but not on automatic adjustments to pegged orders, IEX unreasonably tilts the market in favor of members placing a passive pegged order. One commentator has compared these pegged order types to a "conditional last look," similar to the "last look" permitted on many spot FX exchanges.[11] If IEX wants to slow down order processing, IEX should not be allowed to selectively apply the delay and use pegged orders that adjust based on feeds much faster than the delay imposed on all other quotes on IEX. Indeed, the ability to pay for access delay circumvention via the use of pegged orders as proposed, risks creating a two tiered market on IEX that raises questions regarding fair access under Rule 610.

IEX Should Not be Permitted to Violate Principles of Fair Access for Its Own Broker-Dealer

The Commission has permitted exchanges to own and operate broker-dealers for the limited purpose of routing orders. The Commission has historically limited the scope of activities that these exchange affiliated broker-dealers can perform. Specifically, the Commission has been concerned about potential competitive issues that may arise between exchange affiliated broker-dealers and other member broker-dealers due to preferential treatment of the affiliated broker-dealer.[12] IEX has proposed that the

[11] *See* "IEX Peg Orders: Last Look for Equity Markets?," *Mechanical Markets,* (Oct. 5, 2015) *available at:* https://mechanicalmarkets.wordpress.com/2015/10/05/iex-peg-orders-last-look-for-equity-markets/.
[12] *See e.g.* Securities Exchange Commission Release No. 34-67655; File No. SR-NASDQ-2012-059 (August 2012), "The Commission is concerned whether NASDAQ's proposal would enable Benchmark Orders and Child Orders generated by the Application to receive unfair or unreasonable

computer servers of its affiliated broker-dealer order router (IEX Services, LLC) would be co-located with the IEX matching engine after the IEX access delay. Therefore, when routing orders to IEX, this router could effectively bypass the IEX access delay that all other broker-dealers must endure. By doing so, IEX would provide its affiliated Broker-Dealer an unfair competitive advantage over all other member firms attempting to access IEX's quotes. The SEC should require that any such routing function be located outside of the IEX access delay, and have the same access to the IEX trading platform as all other broker-dealers.

FIA PTG's Position on Simplifying Equity Market Structure

Earlier this year, FIA PTG recommended modernizing Regulation NMS to simplify and improve the regulatory structure of the U.S. equity markets. Specifically, we proposed eliminating the trade through rule (Rule 611); eliminating the prohibition on displaying locked and crossed markets (Rule 610(d)); and introducing enhancements to broker best execution requirements and updating certain disclosures (Rules 605 and 606) ("FIA PTG Proposals").[13]

Since the SEC has not yet acted on the FIA PTG Proposals, compliance with Regulation NMS is still required and the requirements must be applied consistently across the industry. Approval of the Application by the Commission would set an important precedent for all exchanges. The IEX access delay and its proposed interaction with pegged order types and the special access provided to the IEX routing broker-dealer are not consistent with the requirements of Regulation NMS. The IEX quotes should not be considered protected. Likewise, brokers should be permitted to consider the impact of the IEX access delay in making routing and best execution decisions.

In addition, we note that should the SEC decide to approve the Application as proposed it would effectively allow regulated exchanges to introduce intentional delays of different lengths and with different technical implementations, along with complex new order types that interact with these delays in different ways. This would add inordinate complexity to markets that are already in need of significant simplification and would potentially introduce new and largely hidden systemic risks into the US equities markets.

Conclusion

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preferential treatment by NASDAQ (such as through more effective access to the matching engine) as compared to orders generated by market participants that may choose to use a competing algorithm." *available at:* *https://www.sec.gov/rules/sro/nasdaq/2012/34-67655.pdf*

[13] *See* FIA Principal Traders Group: Simplifying U.S. Equity Market Structure (Jan. 28, 2015), *available at:* *https://ptg.fia.org/sites/default/files/content_attachments/FIA%20PTG%20Position%20-%20Simplifying%20US%20Equity%20Market%20Structure.pdf*

FIA PTG respectfully urges the Commission not to approve the IEX application until IEX (1) either amends its proposed rules to provide that IEX quotes are not protected or eliminates the proposed intentional delay in accessing the IEX order book, (2) eliminates the speed advantage of pegged orders, and (3) levels the playing-field between its own routing broker-dealer and other members.

If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Mary Ann Burns (maburns@fia.org).

Respectfully,

FIA Principal Traders Group

Mary Ann Burns

Mary Ann Burns
Chief Operating Officer
FIA

cc: Mary Jo White, Chairwoman
Luis A. Aguilar, Commissioner
Kara M. Stein, Commissioner
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Stephen Luparello, Director, Division of Trading & Markets