sample tested will be reported as positive or negative, and the official NPIP procedure used to classify the sample must be submitted in addition to the assay response value. A completed worksheet for diagnostic test evaluation is required to be submitted with the raw data and may be obtained by contacting the NPIP Senior Coordinator. Raw data and the completed worksheet for diagnostic test evaluation must be submitted to the NPIP Senior Coordinator 4 months prior to the next scheduled General Conference Committee meeting, which is when approval will be sought.

[5] The findings of the cooperating laboratories will be evaluated by the NPIP Technical Committee, and the Technical Committee will make a majority recommendation whether to approve the test kit to the General Conference Committee at the next scheduled General Conference Committee meeting. If the Technical Committee recommends approval, the final approval will be granted in accordance with the procedures described in §§147.46, 147.47, and 147.48.

(6) Diagnostic test kits that are not licensed by the Service (e.g., bacteriological culturing kits) and that have been approved for use in the NPIP in accordance with this section are listed in the NPIP Program Standards.

(b) Approved tests modification and removal. (1) The specific data required for modifications of previously approved tests will be taken on a case-by-case basis by the technical committee.

(2) If the Technical Committee determines that only additional field data is needed at the time of submission for a modification of a previously approved test, allow for a conditional approval for 60 days for data collection side-by-side with a current test. The submitting party must provide complete protocol and study design, including criteria for pass/fail to the Technical Committee. The Technical Committee must review the data prior to final approval. This would only apply to the specific situation where a modified test needs additional field data with poultry to be approved.

(3) Approved diagnostic tests may be removed from the Plan by submission of a proposed change from a participant, Official State Agency, the Department, or other interested person or industry organization. The data in support of removing an approved test will be compiled and evaluated by the NPIP Technical Committee, and the Technical Committee will make a majority recommendation whether to remove the test kit to the General Conference Committee at the next scheduled General Conference Committee meeting. If the Technical Committee recommends removal, the final decision to remove the test will be granted in accordance with the procedures described in §§147.46, 147.47, and 147.48.

Done in Washington, DC, this 18th day of March 2016.

Kevin Shea,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06664 Filed 3–23–16; 8:45 am]

BILLING CODE 3140–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–77407; File No. S7–03–16]

Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed interpretation; request for comment.

SUMMARY: The Securities and Exchange Commission is publishing for comment a proposed interpretation with respect to the definition of automated quotation under Rule 600(b)(3) of Regulation NMS.

DATES: Comments should be received on or before April 14, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments
• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to rule-comments@sec.gov. Please include File Number S7–03–16 on the subject line.

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

All submissions should refer to File Number S7–03–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:
I. Background

A. IEX’s Form 1

On August 21, 2015, Investors’ Exchange LLC (“IEX”) submitted to the Commission a Form 1 application seeking registration as a national securities exchange under Section 6 of the Securities Exchange Act of 1934 (“Act”).1 On September 9, 2015, IEX submitted Amendment No. 1 to its Form 1 application.2 Notice of IEX’s filing of its Form 1 application, as amended, was published for comment in the Federal Register on September 22, 2015.3 Recently, IEX submitted three additional amendments to its Form 1 application.4 Simultaneously with the

2 In Amendment No. 1, IEX submitted updated portions of its Form 1 application, including revised exhibits, a revised version of the proposed IEX Rule Book, and revised Addenda C–2, C–3, C–4, D–1, D–2, F–1, F–2, F–3, F–4, F–5, F–6, F–7, F–8, F–9, F–10, F–11, F–12, and F–13. IEX’s Form 1 application, as amended, including all of the Exhibits referenced above, is available online at www.sec.gov/rules/other.shtml as well as at the Commission’s Public Reference Room.
4 In Amendment No. 2, filed on February 29, 2016, IEX proposed changes to its Form 1 application to, among other things, redesign its outbound routing functionality to direct routine orders first to the IEX router 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 15 microsecond speed bump in the same way an independent third party broker would be subject to a speed bump.” See id. In Amendment No. 3, filed on March 4, 2016, IEX proposed changes to its Form 1 application to clarify and correct revisions to its

15660 Federal Register / Vol. 81, No. 57 / Thursday, March 24, 2016 / Proposed Rules
issuance of this proposed interpretation, the Commission issued a release to notice Amendment Nos. 2, 3, and 4 to IEX’s Form 1 application, instituted proceedings to consider whether to grant or deny IEX’s application, and designated a longer period for Commission action to accommodate those proceedings.

The Commission has received extensive comments on IEX’s Form 1 application, and IEX has submitted several letters in response to concerns raised by commenters. Among other things, a number of commenters on IEX’s Form 1 application asserted that a unique feature of IEX’s design—specifically, its Point-of-Presence (“POP”) and “coil” access delay—would preclude IEX’s best-priced quotation from being a “protected quotation” under Regulation NMS if the Commission grants IEX’s exchange registration. IEX contests this assertion, as do certain other commenters.

As discussed more fully below and as highlighted by a number of commenters on IEX’s Form 1 application, the Commission preliminarily believes that IEX’s proposed POP/coil structure raises questions about prior Commission statements with respect to the definition of an “automated quotation” under Regulation NMS. In light of market and technological developments since the adoption of Regulation NMS in 2005, the Commission is proposing and requesting comment on an updated interpretation to permit more flexibility for trading centers with respect to automated quotations to allow them to develop innovative business models that do not undermine the goals of Rule 611 of Regulation NMS. Specifically, the Commission is proposing to interpret “immediate” when determining whether a trading center maintains an “automated quotation” for purposes of Rule 611 to include response time delays at trading centers that are de minimis, whether intentional or not.

B. Regulation NMS Concept of an Automated Quotation and Protected Quotation

In general, Rule 611 under Regulation NMS (the “Order Protection Rule,” or “Trade-Through Rule”) protects the best automated quotations of exchanges by obligating other trading centers to honor those quotes by not executing trades at inferior prices or “trading through” such best automated quotations. Only an exchange that is an “automated trading center” displaying an “automated quotation” is entitled to this protection. Trading centers must establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations, unless an exception or exemption applies.

When it adopted Regulation NMS, the Commission explained that the purpose of the Order Protection Rule was to incentivize greater use of displayed limit orders, which contribute to price discovery and market liquidity. In discussing whether to apply order protection to manual quotations, the Commission stated that “providing protection to manual quotations, even limited to trade-throughs beyond a certain amount, potentially would lead to undue delays in the routing of investor orders, thereby not justifying the benefits of price protection.” The Commission also noted that “those who route limit orders will be able to control whether their orders are protected by evaluating the extent to which various trading centers display automated versus manual quotations.”

There are several provisions in Regulation NMS that impact whether the Order Protection Rule applies. First, Rule 600(b)(58) defines a “protected quotation” as a “protected bid or a protected offer.” Rule 600(b)(57), in turn, defines a “protected bid or protected offer” as a quotation in an NMS stock that is: (i) Displayed by an “automated trading center,” (ii) disseminated pursuant to an effective national market system plan, and (iii) an “automated quotation” that is the best bid or best offer of a national securities exchange.

In order for an exchange to operate as an “automated trading center,” it must, among other things, have “implemented such systems, procedures, and rules as are necessary to render it capable of displaying quotations that meet the requirements for an ‘automated quotation’ set forth in [Rule 600(b)(3) of Regulation NMS].” Rule 600(b)(3) defines an “automated quotation” as one that:

1. Permits an incoming order to be marked as immediate-or-cancel;
2. Immediately and automatically executes an order marked as immediate-or-cancel against the displayed quotation up to its full size;
3. Immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;
4. Immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order; and
5. Immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.

Any quotation that does not meet the requirements for an automated quotation is defined in Rule 600(b)(37) as a “manual” quotation.

In the Regulation NMS Adopting Release, the Commission elaborated on the meaning of the terms “immediate” and “automatic” as those terms are used in the Rule 600(b)(3) definition of an automated quotation. Specifically, with respect to the meaning of the term “immediate,” the Commission stated that “[t]he term ‘immediate’ precludes any coding of automated systems or other type of intentional device that would delay the action taken with...

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. In Amendment No. 4, filed on March 7, 2016, IEX proposed changes to its Form 1 application 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.


6 The public comment file for IEX’s Form 1 application (File No. 10–222) is available on the Commission’s Web site at: http://www.sec.gov/comments/10-222/10-222.shtml.


8 See, e.g., FIA First Letter; NYSE First Letter; Citadel First Letter.

9 See IEX First Response and IEX Second Response. See also, e.g., Verret Letter; Leuchtkofer Second Letter.

10 See infra text accompanying notes 49–57 (discussing comments on IEX’s Form 1).

11 See 57 CFR 242.611.

12 See 57 CFR 242.600(b)(4).

13 See 57 CFR 242.600(b)(3).


15 17 CFR 242.611(a)(1).

16 See Regulation NMS Adopting Release, supra note 14, at 37516 and 37517.

17 Id. at 37518.

18 17 CFR 242.600(b)(58).

19 17 CFR 242.600(b)(57).

20 17 CFR 242.600(b)(4). Rule 600(b)(4) contains additional requirements that must be satisfied in order to be an automated trading center. Those requirements are not at issue for purposes of this proposed interpretation.

21 See 17 CFR 242.600(b)(3). See also Regulation NMS Adopting Release, supra note 14, at 37504.

22 Regulation NMS Adopting Release, supra note 14, at 37534. See also 17 CFR 242.600(b)(37) (defining “manual quotation”).
In Rules 600 and 611, the Commission did not set a maximum response time for a quotation to be an “automated quotation.” While a number of commenters on Regulation NMS advocated for a specific time standard, ranging from one second down to 250 milliseconds, for distinguishing between manual and automated quotations, the Commission declined to set such a standard, noting that “[t]he definition of automated quotation as adopted does not set forth a specific time standard for responding to an incoming order.” Rather, the Commission specifically sought to avoid specifying a specific time standard that may become obsolete as systems improve over time.” and agreed with commenters that “the standard should be ‘immediate’ i.e., a trading center’s systems should provide the fastest response possible without any programmed delay.”

The Commission provided context in the Regulation NMS Adopting Release as to the intent behind the Order Protection Rule and the distinction between “automated quotations” and “manual quotations.” At the time of the adoption of Regulation NMS, manual quotations and markets that primarily relied on human interaction in a floor-based trading environment, including “hybrid” trading facilities that offer automatic execution of orders seeking to interact with displayed quotations while also maintaining a physical trading floor, experienced processing delays for inbound orders that were measured in multiple seconds. In contrast to floor-based and hybrid markets, at the time Regulation NMS was adopted, newer automated matching systems removed the human element and instead immediately matched buyers and sellers electronically. The Commission sought to achieve the goals of the Order Protection Rule and maintain the efficiencies of the markets by protecting only automated quotations that were “immediately” accessible, and allowing trade-throughs of those that were not.

In Rules 600 and 611, the Commission established a one-second standard for the exception in Rule 611(b)(8), which excepts trade-throughs where the trading center that was traded-through had displayed, within the prior one second, a price equal or inferior to the price of the trade-through transaction. In discussing the 611(b)(8) exception, the Commission stated that it “generally does not believe that the benefits would justify the costs imposed on trading centers of attempting to implement an intermarket price priority rule at the level of sub-second time increments. Accordingly, Rule 611 has been formulated to relieve trading centers of this burden.”

C. IEX’s Access Delay

IEX, which currently operates a trading platform as an alternative trading system, is seeking to register as a national securities exchange. If its registration is granted, IEX would operate an electronic order book for NMS stocks. IEX’s POP and coil infrastructure is how its POP users (”Users”) would connect to IEX. IEX has represented that access to IEX by all Users would be obtained through a POP located in Secaucus, New Jersey. According to IEX, after entering through the POP, a User’s electronic message sent to the IEX trading system would traverse the IEX “coil,” which is a box of compactly coiled optical fiber cable equivalent to a prescribed physical distance of 61,625 meters (approximately 38 miles). After exiting the coil, the User’s message would travel an additional physical distance to the IEX system, located in Weehawken, New Jersey. IEX has represented that routable orders would thereafter be directed to the IEX routing logic, and non-routable orders would be directed to the IEX matching engine. According to IEX, the coil, when combined with the physical distance between the POP and the IEX system, would provide IEX Users sending non-

28 Regulation NMS Adopting Release, supra note 14, at 37534. The Commission also stated that, for a quotation “[i]f quotation will not qualify as ‘automated’, no human discretion in determining any action taken with respect to an order may be exercised after the time an order is received,” and “a quotation will not qualify as ‘automated’ if any human intervention after the time an order is received is allowed to determine the action taken with respect to the quotation.”

29 See id. at 37519. In the case of IEX, its access delay involves hardware (i.e., coiled cable) and geographic dispersion, not software programming. See infra text accompanying notes 40–45. Nevertheless, it is an intentional delay. See id.

30 See Regulation NMS Adopting Release, supra note 14, at 37500 n.21 (”One of the primary effects of the Order Protection Rule adopted today will be to promote much greater speed of execution in the market for exchange-listed stocks. The difference in speed between automated and manual markets often is the difference between a 1-second response and a 15-second response.”)

31 See id. at 37501. More broadly, the Commission stated that the definition of “automated trading center” in Rule 600(b)(4) “offers flexibility for a hybrid market to display both automated and manual quotations, but only when such a market meets basic standards that promote fair and efficient access by the public to the market’s automated quotations.” Id. at 37520. This definition was an outgrowth of two floor-based exchanges’ intention to operate “hybrid” trading facilities that would offer automatic execution against their displayed quotations, while at the same time maintaining a traditional trading floor. See id. at 37518. The Commission also explained that the Order Protection Rule took a substantially different approach to intermarket price protection than the
commenters generally cited to language, discussed above, from the Regulation NMS Adopting Release where the Commission elaborated on what it means for a quotation to be an “automated quotation,” including statements that the term “immediate,” as it relates to the definition of an automated quotation, means that “a trading center’s systems should provide the fastest response possible without any programmed delay” and “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). Based on this language, these commenters contended that IEX’s quotation is not consistent with the definition of automated quotation, or at least questioned whether it can be so considered.

Several commenters urged the Commission not to decide this question in the context of IEX’s Form 1 application. 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. Another commenter urged the Commission “to articulate clear standards regarding the precise amount of time an intentional device can delay access to the quotation of a registered exchange and still be considered an automated quotation.” This commenter 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.

Other commenters offered support for IEX’s proposed access delay, and challenged the assertion that IEX’s quotation would not meet the definition of “automated quotation” under Regulation NMS. According to one commenter, the Commission’s “larger plan” in requiring protected quotes to be “immediately and automatically” accessible under Regulation NMS was “to encourage automated markets and prevent exchanges from favoring their own manual markets, so the SEC protected an exchange’s lit, automated quotes and banned any programmed tricks or devices an exchange might use to give human traders a chance to intervene or any kind of an edge over automated quotes.” In addition, this commenter further asserted, “[t]hat ‘immediately’ simply prohibits discrimination favoring manual markets is all the more obvious in the [Regulation NMS] Adopting Release’s discussion of self-help” where, according to the commenter “[t]he SEC had every opportunity to define ‘immediately’ in absolute terms and declined to do it,” and instead “only went as far as suggesting one second was a reasonable upper bound for declaring self-help and left it up to the marketplace to reward fast markets or punish slow markets.”

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46 A microsecond is one millionth of a second.
47 See IEX First Response at 3. See also Amendment Nos. 2 and 3. Users sending non-routable orders would experience 700 microseconds of one-way latency. 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 against a displayed quotation on IEX. Likewise, the response from the IEX system to the User indicating the action taken by the IEX back to a User (e.g., confirmations of an execution that occurred on IEX) would pass through the same route in reverse.
48 See also id. 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. See id. at 3–4.
49 See, e.g., 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.
50 See, e.g., 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.
51 See, e.g., Jon D. Letter.
52 See, e.g., BATS First Letter at 2; NYSE First Letter at 6. See also Regulation NMS Adopting Release, supra note 14, at 37519.
53 See, e.g., BATS First Letter at 3; FIA First Letter at 2; Citadel First Letter at 3; Citadel Second Letter at 3; see also Regulation NMS Adopting Release, supra note 14, at 37534.
54 See BATS First Letter at 3; FIA First Letter at 2; NYSE First Letter at 6–7; Nasdaq First Letter at 2–3; Citadel First Letter at 3–4; Citadel Second Letter at 3–4; Hudson River Trading Second Letter at 3–4.
55 See, e.g., Citadel Second Letter at 4; Nasdaq Second Letter at 1–4; Direct Match Letter at 2–4; Scott Letter.
56 See, e.g., Citadel Second Letter at 4.
57 BATS First Letter at 3; see also BATS First Letter at 4. A second commenter writing in support of IEX’s POP/coil similarly urged the Commission to articulate the extent of permissible intentional, geographical, or technological delays for registered exchanges. See T. Rowe Price Letter at 2. A third commenter urged the Commission to not approve IEX’s POP/coil without also establishing a maximum permissible delay for registered exchanges. See Jon D. Letter.
Several commenters 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.62 One commenter argued that the 350 microsecond proposed POP/coil delay “would be so de minimis as to have no appreciable impact on market behavior” and is “not much more than the normal latency that all trading platforms impose on their systems.”63 IEX stated 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.”64 In addition, IEX noted that not all exchange matching systems are located in the same vicinity and asserted that “there is no reason to think that the Commission by referring to ‘intentional device’ meant something to set geographic standards with regard to exchange matching system connections generally, or to prescribe the exact length of cable that is or is not allowable.”65

According to IEX, its POP/coil structure “represents a form of prescribed physical distance to which all users are subject when submitting orders to IEX’s trading system” and “[i]n this sense, it is different from means that all exchanges impose to set the terms by which users can connect to their systems.”66 IEX stated 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 refers, 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.67 IEX also provided data from certain subscribers to IEX’s ATS that, according to IEX, indicate that those subscribers’ average latency when trading on IEX is comparable to that when trading on certain other exchanges, “is an order of magnitude less than that of the Chicago Stock Exchange,” and “is on average less than the round-trip latency of the NYSE as well.”68

62 IEX First Response at 7; see also IEX Second Response at 4.
63 IEX First Response at 5.
64 See id. at 6; see also IEX Third Response at 2. One commenter made the same observation, 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 Healthy Markets Letter at 4. See also 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 coiled approximately 38 mile equivalent)). 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; Wilcox Letter.
65 IEX First Response at 7; see also IEX Third Response at 1–3. IEX noted that the Regulation NMS Adopting Release does not define a maximum allowable latency in order for quotations to qualify as automated quotations, and stated that “[t]he POP clearly does not involve a ‘coding of automated intervention to determine the action taken with respect to a quote or the order itself’ and that ‘the POP clearly does not involve a ‘coding of automated system’.” See id. at 2. IEX suggested that the POP is consistent with the purpose of Regulation NMS because “the POP helps to promote access to quotations by limiting the chance that a party displaying a quote in an exchange will use a signal from an execution on IEX to cancel its quote on that other market within microseconds.” See IEX Second Response at 4 (emphasis in original).

II. Commission’s Proposed Interpretation

As discussed above, at the time Regulation NMS was adopted, the concept of an “automated quotation” was intended to address the disparity between automated and manual trading systems in relation to the trade-through requirements of Rule 611. Under Regulation NMS, a trading center must provide an “‘immediate’ response for its quotation to be an ‘automated quotation.’” 71 Although the Commission did not set a maximum response time in Rule 600 or Rule 611 for a quotation to be an automated quotation, in the Regulation NMS Adopting Release the Commission stated that an immediate response meant “the fastest response possible without any programmed delay.” 72 When Regulation NMS was adopted, however, the Commission was focused on the response time delays generated by manual interaction, and crafted exceptions to Rule 611 based on response times of one second.73 Delays in the realm of sub-milliseconds, as presented by the IEX Form 1 application, were not contemplated by the Commission because they generally were not relevant or material for the slower trading technologies used by market participants at the time.

As the speed of trading technology has increased since the adoption of Regulation NMS,74 some trading centers have begun to explore ways to reduce the relevance of speed differentials of claimed that its 350 microsecond latency on inbound orders is actually less than the latency differential between the Nasdaq Stock Market and the highest level of co-location offered by the Nasdaq Stock Market. See id. at 5–6.
75 See 17 CFR 242.600(b)(3) [defining “automated quotation”].
76 Regulation NMS Adopting Release, supra note 14, at 37519.
77 See supra note 26 (citing to footnote 21 of the Regulation NMS adopting release where the Commission noted that “[t]he difference in speed between automated and manual markets often is the difference between a 1-second response and a 15-second response—a disparity that clearly can be important to many investors”).
78 The Commission notes that the smallest time increment suggested by commenters at the time Regulation NMS was adopted—250 milliseconds—is still about one order of magnitude slower than the latency introduced by IEX’s proposed POP/coil delay. See Regulation NMS Adopting Release, supra note 14, at 37518.
79 A number of factors affect the speed at which a market participant can receive market and quote data, submit orders, obtain an execution, and receive information on trades, including hardware, software, and physical distance. See, e.g., Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3610–11 (January 21, 2010) (Concept Release on Equity Market Structure). Recent technological advances have reduced the “latency” that these factors introduce into the order handling process, both in absolute and relative terms, and some market participants and liquidity providers have invested in low-latency systems that take into account the advances in technology. See id. at 3606.
very small increments. Proposals like IEX’s POP/coil that intentionally delay access to an exchange’s quotation, albeit by a sub-millisecond amount, raise questions about the prior interpretation with respect to the definition of an automated quotation under Regulation NMS. Accordingly, the Commission is proposing and soliciting comment on an updated interpretation from that provided in the Regulation NMS Adopting Release.27

Specifically, the Commission preliminarily believes that, in the current market, delays of less than a millisecond in quotation response times may be at a de minimis level that would not impair a market participant’s ability to access a quote, consistent with the goals of Rule 611 and because such delays are within the geographic and technological latencies experienced by market participants today. For example, IEX’s proposed POP/coil would introduce a 350 microsecond delay for a non-routable IOC order before it could access the IEX matching engine. The additional delay introduced by the coil itself, which is approximately 38 miles long, is effectively equivalent to the communications latency between venues that are 38 miles apart.28 The Commission understands that today the distances between exchange data centers, or between the order entry systems of market participants and exchange data centers, may exceed, sometimes by many multiples, a distance of 38 miles. The Commission does not believe that these naturally-occurring response time latencies resulting from geography are inconsistent with the purposes of Rule 611.29 At the same time, permitting the quotations of trading centers with very small response time delays, such as those proposed by IEX, to be treated as automated quotations, and thereby benefit from trade-through-protection under Rule 611, could encourage innovative ways to address market structure issues.

Accordingly, the Commission today is proposing to interpret “immediate” when determining whether a trading center maintains an “automated quotation” for purposes of Rule 611 of Regulation NMS to include response time delays at trading centers that are de minimis, whether intentional or not.30

III. Solicitation of Comment

The Commission requests comment all aspects of this proposed interpretation, including:

1. Would delays of less than a millisecond in quotation response times impair a market participant’s ability to access a quote or impair efficient compliance with Rule 611?

2. In the current market, should the Commission interpret “immediate” as including a de minimis delay of less than one millisecond? Should the Commission consider other lengths? If so, what should they be?

3. Should the Commission be concerned about market manipulation? If so, specifically, what should the Commission focus on?

4. Should the Commission consider an alternative interpretation? If so, what should it be?

By the Commission.

Dated: March 18, 2016.

Brent J. Fields, Secretary.

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