SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78101; File No. 10–222]

In the Matter of the Application of: Investors’ Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

June 17, 2016.

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 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 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

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 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


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.

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


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.

broker or dealer;19 (2) prevent fraudulent and manipulative acts and practices, 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, 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 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

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

• 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 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 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 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

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(u).
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 51215 (August 19, 2010) ("BATS Y 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, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member."
32 See IEX Exchange Operating Agreement, Article III, Section 2(b).
33 See id.
34 See id.
35 See id.
36 See also see also IEX Exchange Operating Agreement Article III, Section 4(g).
37 Each member of the Member Nominating Committee shall be a Member Representative member. See IEX Exchange Operating Agreement Article VI, Section 2. See also see also IEX Exchange Operating Agreement Article V, Section 2(n).
38 Each member of the Member 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 see also IEX Exchange Operating Agreement Article V, Section 2(n).
39 Each member of the Member 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 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 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 Member)\(^51\) 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 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 accept 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.\(^59\)

\(^42\) 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(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).

\(^45\) See id.

\(^46\) See id.


\(^49\) See, e.g., MIAX Exchange Order, supra note 30, at 73067.


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


\(^53\) 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.

\(^54\) See Form 1, Exhibit 1.

\(^55\) 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. 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.

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 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. 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. 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.

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

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.

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.

The Commission believes that IEX Exchange’s proposed committees, which are similar to the committees maintained by other exchanges, 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.

B. IEX Group and Regulation of IEX Exchange

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. 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

61 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.
62 See, e.g., BATS Y Exchange Order and MIAX Exchange Order, supra note 30.
64 The Commission did not receive any comments regarding the substance of regulation.
65 These provisions are designed to ensure compliance 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. 61608 (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”).
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, may beneficially own more than 40% of any class of capital stock of IEXG. 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. If any stockholder violates these ownership limits, IEXG would redeem the shares in excess of the applicable ownership limit at their par value. 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. 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.

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. 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. 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. The IEXG Board is specifically prohibited from waiving the voting and ownership limits above 20% for IEX Exchange members and their related persons. 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. 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 such ownership.

The IEX Exchange Operating Agreement does not include change of control provisions that are similar to those in the IEXG Certificate; however 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; MIAX Exchange Order, supra note 30 at 73069. See also Amended and Restated Certificate of Incorporation of MAVEX Exchange, 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).

Although IEXG is not directly responsible for regulation, its activities with respect to the operation of IEX Exchange must be examined to 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. 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 organized and have the capacity to carry out the purposes of the Act. 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 IEX Exchange’s 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. 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 effectiveness 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.

- 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.

- 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.

- 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, and to the extent of, their respective regulatory authority. 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.

- 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, and to the extent of, their respective regulatory authority.

- The books and records of IEX Exchange and IEXG must be maintained in the United States and, to the extent they are related to the operation or administration of IEX Exchange, IEXG’s books and records will be subject at all times to inspection and copying by the Commission and IEX Exchange.

- 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. Similar provisions apply to IEXG and its directors, officers, employees and agents.

- 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 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 Act 105 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 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 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 approves IEX’s application for registration as a national securities exchange, IEXG will allocate sufficient assets to IEX Exchange to enable the exchange’s operations.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

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103 See IEXG Certificate Article NINTH; and IEXG By-Laws, Article XIV, Section 51.
106 Id.
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.
111 See IEX Exchange Operating Agreement Article VII, Section 9.
112 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.
113 See Form 1, Exhibit I.
115 See id. See also Section 19(g) of the Act, 15 U.S.C. 78g(g).
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.
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. Any excess non-regulatory funds, as determined by IEX Exchange, may be remitted to IEXG.\textsuperscript{119} 

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.\textsuperscript{120} Specifically, IEX Exchange represents that FINRA will perform certain regulatory surveillance of trading activity on IEX Exchange, conduct various regulatory services on behalf of IEX Exchange, which are expected to include performance of investigation, disciplinary, and hearing services.\textsuperscript{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.\textsuperscript{122} These 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{126}

c. 17d–2 Agreements

Section 19(g)(1) of the Act,\textsuperscript{127} among other things, requires every SRO registered as either a national securities exchange or national securities association to examine for, and 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{130} Such regulatory duplication would add unnecessary expenses for common members and their SROs.\textsuperscript{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.\textsuperscript{132} Many SROs have entered into Rule 17d–2 agreements.\textsuperscript{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.\textsuperscript{134} This agreement would allocate to FINRA

\textsuperscript{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].\textsuperscript{119} This definition of is consistent with the rules of other SROs. See e.g., By-Laws of MIAX Exchange, Article I(e); By-Laws of NASDAQ PHXL LLC, Article III(ii); and By-Laws of NASDAQ BX, Inc., Article III(iii).

\textsuperscript{120} 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.

\textsuperscript{121} See Form 1, Exhibits C and L. See also IEX Exchange Rules 1.160(hh) and 6.170.

\textsuperscript{122} See Form 1, Exhibit C.

\textsuperscript{123} 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

\textsuperscript{124} 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. See also infra notes 50; and BATS Exchange Order and DirectEdge Exchange Order, supra note 50.

\textsuperscript{125} 17d–2 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 6, 1976) (“Rule 17d–2 Adopting Release”).


\textsuperscript{128} See, e.g., Regulation ATS Release, supra note 48. See also Nasdaq Exchange Order, supra note 50; and BATS Exchange Order and DirectEdge Exchange Order, supra note 74.

\textsuperscript{129} 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.

\textsuperscript{130} 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.

\textsuperscript{131} See id.

\textsuperscript{132} See Rule 17d–2 Adopting Release, supra note 129.

\textsuperscript{133} See, e.g., Securities Exchange Act Release Nos. 59218 (January 6, 2009), 74 FR 2143 (January 14, 2009) (File No. 4–575) (FINRA/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 6375 (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/Nasdex).
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.131 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.132 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 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, as well as letters opposing or criticizing in whole or part some of IEX’s proposed features. 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. In particular, though IEX did not propose any fees in its Form 1, commenters noted IEX’s stated intent not to pursue “maker-taker” pricing and instead offer flat transaction fees. Some commenters praised IEX for offering fewer order types. Several commenters highlighted IEX’s “coil” delay, discussed in detail below, and asserted that it may help counter latency arbitrage. In addition, one commenter focused on selling speed and data,” and noting that as an ATS, IEX allowed it and its customers to achieve best execution”;

133 See, e.g., Leuchtker First Letter; Leuchtker Second Letter; Verret Letter; Shatto Letters 1, 2, and 3; Simonelis Letter; Capital Group Letter; Southeastern Letter; Navari Letter; DV Advisors Letter; Covex Letter; Themis First Letter; Thelma Second Letter; Oppenheimer Funds Letter; Murphy Letter; Birch Bay Letter; Healthy Markets Letter; Keblish Letter; Bowcott Letter; Secrict Letter; Stevens Letter; Oltean Letter; Park Letter; Crespo Letter; Colbert Letter; Lewis Letter; Lewis Letter; Hovance First Letter; Hovance Second Letter; Meskill Letter; Brian S. Letter; Glennon Letter; Shaw Letter; Upson Letter; Goldman Sachs Letter; Roberson Letter; Lynch Letter; Budish Letter; Chen & Foley Letter; Liquidnet Letter; T. Rowe Price Letter; Sherman Letter; CALSTRS Letter; PSRS/PEERS Letter; Asset Owners/Investment Letter; March 21 Letter; Maqbool Letter; Israel Letter.


135 See, e.g., Capital Group Letter at 1 (noting the “technologies encourage 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 undersized asset managers) (complimenting IEX’s proposed benefits to investors in “reducing structural inefficiencies in the market, and offering a more balanced and simplified market”); Navari Letter at 1 (noting certain features that “have great promise for the [retail] investor”); DV Advisors Letter; Covex Letter; Themis First Letter (noting that IEX’s “uncoordinated asset managers” 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
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 the proposed system are designed to provide 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 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 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 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 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 submit 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

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143 See NYSE First Letter; Nasdaq First Letter; TBATS First Letter; Citadel First Letter; Citadel Second Letter; Citadel Third 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 Loh Letter. See discussion infra. at Rule 611 of IEX’s proposed POP/coil delay, including the comments thereto.

144 See Markit Second Letter at 4–6; AK Financial Engineering Consultants First Letter; Anonymous March 16 Letter; 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).

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

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

147 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. See IEX Rule 11.220(a)(1).

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

150 See IEX Rule 11.220(a)(1). The Commission notes that some commenters have 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.

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

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

153 See IEX Rule 11.230(a)(2). See also 17 CFR 242.610(d).

154 See IEX Rule 11.190(b)(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 aggressive of the order’s limit price or the midpoint of the NBBO. Id.

155 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).

156 See IEX Rule 11.230(a)(4)(D).
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 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).\(^\text{162}\) 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.\(^\text{162}\)

Some commenters criticized IEX’s proposed non-displayed order types, and in particular IEX’s proposed handling of pegged orders.\(^\text{163}\) Some of these commenters also specifically criticized IEX’s proposed discretionary peg order type.\(^\text{164}\)

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 NBBO for buy orders, the NBBO for sell orders) or the order’s limit price, if any. The IEX system automatically adjusts the price and rank of the order in response to changes in the NBBO 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.\(^\text{165}\) 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 orders on the order book, thereby potentially provide price improvement to such active orders.

Certain commenters that criticized IEX’s discretionary peg order type suggest 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.\(^\text{166}\) 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.\(^\text{167}\)

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.\(^\text{168}\) 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.”\(^\text{169}\)

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.\(^\text{170}\) IEX also represents that its rules set forth “the precise mathematical formula” that IEX uses to determine whether a “crumbling quote” situation exists.\(^\text{171}\) 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.\(^\text{172}\) 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.”\(^\text{173}\) 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.”\(^\text{174}\)

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...
there is a crumbling quote. See

disclose the full equation for determining whether

is novel but also fully transparent, as IEX’s rules

Order Disapproval,

Letter at 5.

mathematical formula that IEX uses to

be eligible for execution up (down) to

discretionary peg orders will or will not

the specific conditions under which IEX

feature, IEX Rule 11.190(g) delineates

determination. With respect to this

“off” depending on IEX’s quote stability

in the way that the discretion

and pegging features is not novel.

Furthermore, 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. IEX has thus encoded in its rule the totality of

discretionary and pegging features. 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 Act 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, 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. 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 discretionary peg orders, IEX would need to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act 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. 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. 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.”

The Commission believes that IEX constructed its proposed order type rules in a manner that is reasonably designed to promote efficient 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 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. 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. 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

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 6–9; 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; IEX Letter at 3.

See also IEX Second Response at 8.


See Nasdaq First Letter at 1–2.

See IEX Second Response at 8.


See Nasdaq First Letter at 4.
that cannot be reported to the SIPs.” 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.” 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 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. 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. 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. 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.

Access to IEX by all Users will be obtained through a POP, which IEX represents is located in Secaucus, New Jersey. 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). Exiting the coil, the User’s message travels an additional physical distance to the IEX trading system, located in Weehawken, New Jersey. 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. 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. 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.

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 being accessible to Users at the POP.

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.

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 trading system, which would otherwise traverse the POP/coil, for each update. 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, 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

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. IEX notes that the POP/coil delay’s consistency with the Act is discussed further below in this section. See also Final Interpretation, supra note 13.

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.

201 See IEX Rule 11.510(c)(2); see also IEX First Response at 4. In accordance with 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.

202 See IEX Rule 11.510(c)(2); see also IEX First Response at 4.
does not delay the IEX system’s ability to detect and react to price changes at other trading centers.\textsuperscript{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.\textsuperscript{206} This provides IEX’s matching engine with a time advantage\textsuperscript{207} 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.

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.\textsuperscript{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.”\textsuperscript{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, the Commission has 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 the participant’s member (though 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 propriety market data, and those that do must offer it to all market participants in a non unfairly discriminatory manner.\textsuperscript{210} 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 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 uncumbersome 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.\textsuperscript{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.\textsuperscript{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 result.

\textsuperscript{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).

\textsuperscript{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 11.1900(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.

\textsuperscript{207} See IEX Second Response at 2.

\textsuperscript{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.

\textsuperscript{209} See IEX First Response at 4.

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

\textsuperscript{211} See 15 U.S.C. 78d(b)(5).

\textsuperscript{212} See, e.g., Budish Letter at 2–4; CB Trading Letter at 2–5; Jones C Letter at 2–3; Nasdaq Third Letter at 2–4.

\textsuperscript{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.
Interpretation also criticized what they termed IEX’s “selective” application of its POP/coil delay. One such commenter opined that geographic 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 laticies.” Another commenter criticized 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.”

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.

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. See also Citadel Interp Letter at 8. One commenter noted that it seeks “to bring the benefits of exchange oversight and regulation to more of the trading that currently happens off-exchange.”

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.

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

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. See also Citadel Interp Letter at 8. One commenter noted that it seeks “to bring the benefits of exchange oversight and regulation to more of the trading that currently happens off-exchange.”

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 Healthy Markets Letter at 4. 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.” Market Interp Letter at 2–3. The commenter urged the Commission to explicitly preclude exchanges from “repricing the delay to reprice non-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.

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


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

219 See IEX Second Response at 12–13. IEX noted that as an ATS; 8.76% of IEX matched volume.
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 “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. Through IEX’s proposed 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 foresee 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. 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.

6. Outbound Routing through IEX

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 from IEX to 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, and might lead other exchanges to implement similar features that would add complexity to the markets and be detrimental to market structure. Some commenters recommended that orders sent from IEX to IEXS be subject to the same POP/coil delay as unaffiliated members. Other commenters supported IEX’s initially proposed routing structure.

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. Specifically, IEX will

222 See BATS First Letter at 4–5; BATS Second Letter at 3-4; 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.

223 See Hudson River Trading First Letter at 6–7; BATS Second Letter at 4–5; Citadel Third Letter at 2; Hunsecker Letter; Weldon First Letter.

224 See Markit First Letter at 3; BATS Second Letter at 5–6; Citadel First Letter at 4–5; CBOE First 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 4–5; Hunsacker Letter.

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

226 See IEX Sixth Response, at 1. The proposed revisions to accommodate the new routing process...
direct non-routable orders to the IEX matching engine, while it will direct routable orders to the IEX routing logic. 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 microseconds of latency as compared to members sending non-routable orders with 350 microseconds of latency. IEX routing members sending non-routable orders with any portion of the routable order first reaches the IEX book. 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. In addition, the routing logic would receive IEX exchange data products subject to the POP/coil delay. 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. As such, IEX represents that its routing functionality would have no information advantage (i.e., no special view of IEX’s book, including displayed or non-displayed interest), and IEX represents that the proposal places its routable orders to the IEX order book and when receiving transaction information from the IEX matching engine. 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.

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. 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. 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. 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.

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 subsequently, in Amendment Nos. 2, 3, and 4. 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 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.

See IEX Second Letter at 2; FIA Second Letter at 2–3; NYSE Third Letter at 8–9. See also IEX Sixth Response at 2. In
exchange’s rules. For example, in approving an exchange with an affiliated outbound routing broker, the Commission previously noted that “[a] conflict of interest would arise if the national securities exchange (or an affiliate) provided advantages to its broker-dealer that are not available to other members.” 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.”

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.

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.

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 on a view of the IEX book that is subject to the POP/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 with its non-routable order, and it would experience the same 350 microsecond latency in waiting to determine what, if any, remaining 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. 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, would not be unfairly discriminatory and would not impose an inappropriate burden on competition.

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.

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, such that its quotations 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”),253 attracted considerable attention among commenters. Specifically, several commenters wondered 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

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 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 crossed markets.261 Some commenters contend 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

252 See 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.

253 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.

254 See IEX Rule 11.510.
been communicated through IEX’s proprietary data. 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. Other commenters did not believe that protecting IEX’s quotations despite IEX’s POP/coil would have a detrimental impact on market quality, 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. 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 “localizing its primary data center 65 or more miles away from the other exchange data centers.” 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.”

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. 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 comparable to—and even less than—delays attributable to other markets that currently are included in the NBBO. 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.
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 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 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

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)(ii), 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 242.620(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 of unexecuted portions, transmission of a response to the sender, and updates to its displayed quotation. See also IEX Rule 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 automatically generated quotations that are protected under Rule 611.

[a ]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. See id.; see also 17 CFR 242.600(b)(3); Regulation NMS Adopting Release, supra note 253, at 37504.

[b ]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 to planned delays, 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.

[c ]See Final Interpretation, supra note 13.

275 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 sanctioning. IEX’s rules also provide for the imposition of financial penalties for certain minor rule violations in lieu of commencing disciplinary proceedings.286


276 See id.

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

278 See IEX Rule 1.160(f).

279 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).


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

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

283 See IEX Rule 9.210(b).
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 rules.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 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 Act or such security is subject to an exemption.293 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 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 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 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

287 17 CFR 240.19d–1(c)(2).
288 See Instinet Letter at 2.
290 15 U.S.C. 78b(h)(6) and (b)(7).
292 The Commission did not receive any comments addressing the substance of the listing requirements.
295 15 U.S.C. 78b(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.
299 See Nasdaq Rule 5000 Series; IEX Rules Chapter 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 Section 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).
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 Section 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 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.
305 See Securities Exchange Act Release Nos. 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 is 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).
The Commission believes that the 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 Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, 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 stated that the Commission concurred 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 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 Accordingly to 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

318 See IEX 11(a) Letter, supra note 316. 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 Nos. 14503 (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”).
319 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.
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 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


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 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 exchange execution 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.

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

324 See IEX Exchange Proposal to Incorporate by Reference to Section 11(a) of the Act and Rule 11a2–2(T) thereunder, 79 FR 61645 (August 21, 2014) (approval of the BATS Exchange and 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 person 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 transactions for the account during the period covered by the statement. See 17 CFR 240.11a2–2(T)(d). See also 1979 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 for changes under Section 19(b) of the Act. 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 provide 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 further ordered that operation of IEX Exchange is conditioned on the satisfaction of the requirements below:

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

325 See also IEX Exchange Proposal to Incorporate by Reference to Section 11(a) of the Act and Rule 11a2–2(T) thereunder, 79 FR 61645 (August 21, 2014) (approval of the BATS Exchange and 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 person 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 transactions for the account during the period covered by the statement. See 17 CFR 240.11a2–2(T)(d). See also 1979 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”). 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) and 5210 (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) as IEX rules (individual rules within a category) that are not trading rules. 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

326 The Commission will also consider an application by the CBOE to incorporate a rule that the CBOE has previously incorporated by reference. This exemption is appropriate in the public interest and consistent with the protection of investors because it will provide 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.

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

328 IEX Exchange will provide such notice through a posting on the same Web site location where IEX Exchange posts its own rule filings pursuant to Rule 10b–4 under the Act, within the required time frame. The Web site posting will include a link to the location on the FINRA Web site where FINRA’s proposed rule change is posted.


330 See, e.g., BATS Y Exchange Order and MIAX Exchange Order, supra note 30; BATS Exchange Order and DirectEdge Exchanges Order, supra note 74.
Program, and the Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.


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

D. 17d–2 Agreement. An agreement pursuant to Rule 17d–2 between FINRA and IEX Exchange that allocates regulatory responsibility for those matters specified above 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 Plans. IEX Exchange must join the Intermarket Surveillance Group.

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.

It is further ordered, pursuant to Section 36 of the Act, 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 Commissioners STEIN; Commissioner PIWOWAR concurring in part and dissenting with respect to Sections III.C.7 and III.C.8).

Robert W. Errett,
Deputy Secretary.

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)

Aesthetic Integration: Letter from Denis A. Ignatovich and Grant Passmore, Co-Founders, Aesthetic Integration Ltd, Nov. 18, 2015.
Angel: Letter from James J. Angel, Ph.D., Associate Professor, McDonough School of Business, Georgetown University, Dec. 5, 2015.
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, Wespath Investment Management, Mar. 21, 2016.
Barth: Letter from Donald J. Barth, Mar. 4, 2016.
Birch Bay: Letter from Michael Jacekko, Chief Executive Manager, Birch Bay Capital, LLC, Nov. 6, 2015.
Bowcott: Letter from Mike Bowcott, Dec. 9, 2015.
Budish: Letter from Eric Budish, Professor of Economics, University of Chicago Booth School of Business, Feb. 5, 2016.
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.
Chen & Foley: Letter from Haoming Chen and Sean Foley, Ph.D., Feb. 24, 2016.
Morris: Letter from Kelly Morris, Apr. 9, 2016.
Murphy: Letter from Ann Murphy, Associate Dean, Undergraduate Studies, School of Business, Stevens Institute of Technology, Nov. 6, 2015.
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.
Nicholas: Letter from Patrick Nicholas, Apr. 20, 2016.
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, Nov. 12, 2015.
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.
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.
PDQ Enterprises: Letter from D. Keith Ross, Jr., Chairman and CEO, PDQ Enterprises, LLC, Mar. 16, 2016.
Phil: Letter from Richard Philip, Ph.D., Lecturer of Finance, University of Sydney, Feb. 9, 2016.
Place: Letter from James C. Place, Mar. 16, 2016.
Raju: Letter from Muralidhara Raju, Mar. 1, 2016.
Reich: Letter from Kyle Reich, Dec. 11, 2015.
Rundle: Letter from John B. Rundle, Professor of Physics, University of California, Davis, Dec. 31, 2015.
Sarly: Letter from Alex E. Sarly, Mar. 18, 2016.
Stein N.: Letter from Nicholas C. Stein, Jan. 6, 2016.
Street: Letter from Carol Street, Feb. 10, 2016.
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.
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.
Verno: 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.
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.
Young P.: Letter from Patrick L. Young, Nov. 2, 2015.
Zevin Asset Management: Letter from Robert Zevin, Chairman, Zevin Asset Management LLC, Jan. 8, 2016.

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