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April 23, 2020

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

Re: Notice of Filing of a Proposed Rule Change to Add a New Discretionary Limit Order Type (File No. SR-IEX-2019-15)

Dear Ms. Countryman:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to provide additional comments to the U.S. Securities and Exchange Commission (the "SEC" or "Commission") on the Investors' Exchange, LLC ("IEX") proposal to introduce a new "Discretionary Limit" ("D-Limit") order type (the "Proposal").[2] We have reviewed the IEX response[3] to our previous comments,[4] as well as those made by others, and do not find them persuasive. We continue to believe the Proposal should be disapproved.

The IEX proposal is beset with many of the same issues that led the SEC to disapprove the EDGA asymmetric speed bump. In our First Letter, we stated that the combination of the proposed D-Limit order type and the existing speed bump on IEX raised many of the same concerns as the Cboe EDGA Exchange, Inc. ("EDGA") proposal to introduce an asymmetric speed bump. Since that time, the Commission has disapproved the EDGA proposal.[5] The IEX Proposal

[1] FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS.

[2] *See* IEX Notice of Filing of Proposed Rule Change To Add a New Discretionary Limit Order Type (the "Proposal").

[3] *See* IEX Response Letter, February 13, 2020 ("Response Letter").

[4] *See* FIA PTG Comment Letter on IEX Discretionary Limit Order Type Proposal, January 21, 2020. (FIA PTG "First Letter").

[5] *See* Cboe EDGA Exchange, Inc.; Order Disapproving Proposed Rule Change To Introduce a Liquidity Provider Protection Delay Mechanism on EDGA. ("EDGA Disapproval Order").

suffers from similar flaws, including lacking sufficient data to enable the Commission to independently conclude that the Proposal is consistent with the Exchange Act. The Proposal contains an additional flaw in that, unlike the EDGA proposal, it seeks Protected Quote status under Regulation NMS. In particular:

IEX does not adequately analyze the trading activity occurring when the crumbling quote indicator ("CQI")[6] is on, nor does it demonstrate that the D-Limit order would not permit unfair discrimination against liquidity taking orders that are not related to latency arbitrage. For example, if a market participant attempted to execute on all exchanges at the current best price, IEX may observe some of the other exchanges' quotations being updated and trigger the CQI, impeding the ability to fill sweep orders across the market. IEX has failed to disclose how many sweep orders currently execute against displayed liquidity when the CQI is on. IEX has also failed to disclose whether hedging activities by market makers would be negatively impacted. For example, options market makers that provide liquidity in an option trade may look to hedge their exposure nearly simultaneously and seek to execute against the same quotes in the underlying security. Similarly, executions in an American Depository Receipt ("ADR"), a future or exchange-traded fund ("ETF") product involving multiple liquidity providers may lead multiple firms to seek to access displayed quotes nearly simultaneously in order to hedge their exposure. IEX has not demonstrated that it can differentiate between any of these activities and what it deems "latency arbitrage" nor has it provided any data demonstrating what percentage of trading activity occurring when the CQI is on is due to latency arbitrage.

IEX has failed to establish that there is any difference between the technology employed by liquidity takers and liquidity providers that would justify the discriminatory aspects of the D-Limit order type. IEX uses the term "latency arbitrage" liberally throughout both its Proposal and Response Letter. IEX loosely defines latency arbitrage as "market participants that have access to the fastest and most complete view of market data from all the major exchanges are able to predict imminent changes to national best bid and offer quotations."[7] In its Response Letter, IEX posits "The asymmetry involved in the latency arbitrage strategies that are the focus of D-Limit favors the few participants that can take liquidity using the most sophisticated tools, in contrast to both market makers and brokers acting for investors that provide liquidity by posting displayed quotes."[8] IEX provides no data to support this statement, which is not consistent with the experience of our members, all of whom are liquidity providers.[9]

In disapproving the EDGA proposal the Commission cited among other things "the Exchange has not provided support for a fundamental premise of this proposed rule change -- that liquidity takers use the latest microwave connections and EDGA liquidity providers use traditional fiber connections, and liquidity takers are able to use the resulting speed differential to effect latency

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[6] It is important to note that CQI is designed to have a false positive rate of approximately 50%. *See* https://iextrading.com/docs/The%20Evolution%20of%20the%20Crumbling%20Quote%20Signal.pdf

[7] Supra 2 at 71997.

[8] Supra 3 at page 3.

[9] In 2014, then Bats CEO, Joe Ratterman stated "97% of equity volume transacted on Bats' exchanges is from market participants who utilize direct feeds, and 90% of volume is from traders who have co-location arrangements." *See* https://www.marketsmedia.com/proprietary-data-feeds-unfair/

arbitrage on the Exchange. The Exchange does not differentiate between latency arbitrage and other trading activity such as hedging activity by ETFs or options liquidity providers."[10] As stated above, FIA PTG has the same concerns with the IEX Proposal.

IEX fails to demonstrate the extent to which latency arbitrage is a problem on IEX, nor to what extent the Proposal would reduce latency arbitrage. Moreover, IEX has not demonstrated the premise of the filing - that liquidity takers use "the fastest and most complete view of market data…to predict imminent changes to the national best bid and offer quotations,"[11] whereas market makers and liquidity providers do not. In the EDGA Disapproval Order the Commission said, and FIA PTG agrees, "The limited empirical information provided by the Exchange does not adequately demonstrate either the extent of the problem of latency arbitrage that the Exchange seeks to address or that the proposal would be sufficiently tailored to address the identified problem."[12]

There is no de minimis threshold on quote accessibility. Today more than ever, with historically high levels of volatility the Commission should not allow IEX to simply dismiss concerns around the impact of an order type that could cause displayed liquidity to vanish. Unlike the duration of intentional delays, where the Commission established a *de minimis* threshold, there is no *de minimis* threshold on quote accessibility. IEX should not be allowed to dismiss the impact the D-Limit order type, and resultant quote fading, will have on market quality when introducing an order type that will result in quote inaccessibility during periods when 24% of displayed volume is currently executed on IEX**.** As a result, in no event should D-Limit quotations be considered protected.

IEX's response to comments has not addressed important issues related to the Proposal. Rather IEX has raised unrelated issues to attempt to justify the D-Limit order. Here are a couple of examples:

- IEX responds to the question on the ability to capture quotes during an intermarket sweep by stating that "IEX believes that brokers seeking to maximize their ability to capture liquidity on all markets (IEX and others) take account of geographical and other differences among exchanges, so that orders sent to some exchanges do not impede their ability to access liquidity on others, with the goal of maximizing fill rates on 'market-wide sweep' orders."[13] IEX neglects to mention that due to its speed bump the way that a market participant would achieve this is by routing to IEX prior to any other exchanges at the same price. In addition, the Commission rejected this logic in the EDGA Disapproval Order stating "a market participant's ability to adapt its business model or alter its trading strategies in response to this proposed rule does not, by itself, demonstrate that the proposal would not permit unfair discrimination." [14]

[10] Supra 5 at 11436.
[11] Supra 2 at 71997.
[12] Supra 5 at 11432.
[13] Supra 3 at page 8.
[14] Supra 5 at 11435.

- Despite stating in the Proposal that "… D-Limit orders may not be accessible to other market participants…"[15] IEX responds to concerns related to Protected Quote status for D-limit orders by stating that "'accessibility' is a relative term."[16] IEX then goes on to discuss unrelated issues.

Finally, FIA PTG reiterates our previous comments that market resiliency could be impacted "if market-wide systemic quote fading is allowed."[17] Now is certainly not the time to implement any changes to market structure that could introduce additional fragility into the national market system. Our equity markets are known as the hallmark of stability and reliability. Yet now in addition to introducing further complexity into an already complex market ecosystem, we seem to be considering mechanisms that facilitate fading quotes and phantom liquidity. Complexity, quote fading and worsened customer experience… a truly disastrous triple threat. Accordingly, FIA PTG again respectfully urges the Commission to disapprove the IEX Proposal.

If you have any questions about these comments, or if we can provide further information, please contact Joanna Mallers (jmallers@fia.org).

Respectfully,

FIA Principal Traders Group

Joanna Mallers
Secretary

cc: Walter J. Clayton, Chairman
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
Allison H. Lee, Commissioner
Brett W. Redfearn, Director of the Division of Trading and Markets

[15] Supra 2 at 72003.
[16] Supra 3 at page 10.
[17] Supra 4 at page 4.