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September 21, 2017

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

Re: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change Related to Transaction Fees Pursuant to Rule 15.110
Release No. 34-81484; File No. SR-IEX-2017-27

Dear Mr. Fields:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to comment on the proposal by the Investors Exchange LLC (“IEX”) to introduce a new fee type, the Crumbling Quote Remove Fee (the “Proposal”).² However, before we do so we would like to restate our general objection to any individual exchange proposals that add complexity to our already overly complex equity market structure and to reiterate our call for the U.S. Securities and Exchange Commission (the “Commission”) to impose a moratorium on exchange proposals like this one until it is able to complete a comprehensive review.

FIA PTG has been advocating for comprehensive market structure reform for years and has specifically called for a holistic review of Regulation NMS (“Reg NMS”) and its

¹ FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and 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 (see <https://ptg.fia.org/keywords/equity-market-structure>).

² <https://www.federalregister.gov/documents/2017/08/31/2017-18447/self-regulatory-organizations-investors-exchange-llc-notice-of-filing-and-immediate-effectiveness-of>

effects on markets since 2014.³ While we recognize that this is a significant undertaking, we believe there are several broad goals for market reform that enjoy substantial support from a wide variety of market participants. Those goals include:

1. Reducing complexity, order type proliferation and fragmentation;
2. Enhancing true exchange competition;
3. Preserving the benefits of order protection for investors;
4. Enhancing the value of displayed quotes;
5. Enhancing competition between lit and dark venues; and
6. Improving transparency for investors.

We strongly support action by the Commission to address the fundamental complexity in equity market structure rather than taking a reactive and piecemeal approach to individual exchange proposals. That being said, we have serious concerns about this particular Proposal and its potential for far-reaching ramifications, which are detailed below.

By way of history, currently IEX charges match fees only for posting or accessing non-displayed liquidity. To attract more displayed quotes and orders that take displayed liquidity, IEX does not charge a fee for displayed activity. It is important to note that the IEX displayed quote is its Reg NMS protected quote, and that taking displayed liquidity on IEX may sometimes be required by Reg NMS.

The proposal looks to increase the match fee for accessing IEX's protected quote from zero to 30 mils – the maximum allowable fee under Reg NMS. However, this fee only applies to certain parties, and at certain times during the day when the IEX crumbling quote indicator ("CQI") is active. FIA PTG believes this is a novel form of discriminatory pricing that creates an access barrier to the IEX protected quote applied to only certain parties and during select times.

IEX already has a non-discriminatory (at least among market participants) 350 microsecond delay mechanism that, when used in conjunction with its CQI, IEX claims prevents so-called latency arbitrage on their platform. The Commission approved this delay based on the fact that (a) it does not discriminate among market participants, and (b) that this particular intentional access delay was considered to be de minimis.

FIA PTG believes the IEX proposal is inconsistent with the Commission's guidance in at least two aspects.

³ See FIA PTG *Equity Market Structure Position Paper* (Sept. 30, 2014) available at https://ptg.fia.org/sites/default/files/content_attachments/FIA%20PTG%20Equity%20Market%20Structure%20Position%20Paper%20-%20final.pdf and FIA PTG *Position Paper on Simplifying U.S. Equity Market Structure* (Jan. 28, 2015) available at https://ptg.fia.org/sites/default/files/content_attachments/FIA%20PTG%20Position%20-%20Simplifying%20US%20Equity%20Market%20Structure.pdf.

- 1) The Crumbling Quote Remove Fee (“Penalty Fee”) is only charged during certain times and to certain parties. By design the fee is intended to be discriminatory and thus creates discriminatory access to protected quotes frustrating the purposes of Reg NMS.
- 2) The Penalty Fee is based on IEX modeling price moves one full second after liquidity is taken. This cannot be construed as any form of so-called latency arbitrage as IEX had already defined that to be within 350 microseconds. Though IEX is not charging a retroactive fee based on where the market moves in one second, that is seemingly the purpose of the fee and it is only because the IEX CQI is not perfectly predictive that the fee is not effectively retroactive. As such, FIA PTG believes that IEX is essentially hampering (via a Penalty Fee) market participants from accessing its protected quote for one full second so that, presumably, those posting liquidity at the IEX protected quote can cancel and reprice those quotes at a new level. This time scale is almost 3000 times longer than the 350 microseconds the Commission considered to be *de minimis* when it approved IEX’s exchange application. As structured, this fee is not related to IEX matching costs, or any other inherent systems cost since at all other times accessing the protected quote is free. Rather, FIA PTG believes this charge is specifically designed to penalize and thus discourage certain market participants from trying to access an IEX protected quote.

The fact that IEX claims this charge will apply for only a couple seconds per day when the CQI is on is not germane to the determination of whether a practice is fair or discriminatory. More so, IEX states that 30% or more of displayed liquidity-taking orders are sent to IEX during those periods of time.⁴ This shows that the discriminatory fee will be effectively applied to a much, much larger percentage of overall IEX displayed liquidity-taking orders and belies the IEX justification that it is applied for less than 2 out of 23,400 seconds per trading day.⁵

IEX provides no data or legal rationale for why orders that take liquidity prior to a subsequent one-second price move should be penalized with a discriminatory fee. It is our understanding that IEX’s protected quote is rarely at the NBBO. Thus, market participants will not normally access the IEX protected quote since it will be beyond the NBBO. However, there are certain times during the day where the IEX protected quote may be at the NBBO, and market participants may desire to access that liquidity. It should come as no surprise that these times would coincide with conditions under which prices may be re-adjusting. This, after all, is when most market participants are willing to cross the spread. But this is exactly the time that IEX proposes to impose its Penalty Fee.

⁴ The Proposal at 41447.

⁵ *Id.*

FIA PTG believes that using the one-second price change as a justification for such a penalty frustrates the purpose of Reg NMS. The IEX protected quote is more accessible when it is not actually needed, but less accessible when it is needed. Further, the approval of a Penalty Fee that is based on a model of future profitability of a trade is unprecedented and would likely trigger a large number of extremely complex pricing structures with unknown consequences. IEX cannot characterize taking liquidity under these circumstances as latency arbitrage given the one-second model they are using. If the Commission approves this proposal we believe it will need to articulate a clear and precedent-setting rationale for an exchange charging discriminatory fees based solely on an exchange's model of the future profitability of any given trade.

We further note that the IEX CQI itself is not adequately predictive as IEX states there is a 75% probability that the price moves in the favor of the liquidity-taker in the subsequent one second. Thus, 24% of the time market participants will pay a Penalty Fee for accessing a protected quote even though the price did not move in their favor.⁶

Though the IEX CQI methodology is published as part of the IEX rulebook, it would not be practical for market participants to replicate this exact logic in their own systems. Such participants would need to access the same data feeds used by IEX and timing discrepancies would likely yield different results. As such, market participants would not know whether or not they are subject to paying the IEX Penalty Fee when they send the order. This uncertainty in the match fee (zero versus 30 mils) can further frustrate access to a protected quote.

FIA PTG believes the Commission should consider providing a trade-through exemption for the IEX protected quote when the CQI is active. Though the Penalty Fee of 30 mils is still within the allowable Reg NMS charge, since it is seemingly designed as a penalty to hamper access to the protected quote at certain times, the protected quote status during those exact same times should be revoked.

The CQI, together with its related functionality and fees, is yet another encroachment from a self-regulatory organization ("SRO") into broker-dealer activities. We question why the exchange should be permitted to make broker-dealer-like decisions on behalf of its members without the associated responsibilities and liability. Historically, broker-dealers have been tasked with order handling, including price movement and best execution responsibilities. This proposed mechanism and fee provides the exchange this discretion while still enjoying the privileges of SRO status. This amounts to a slippery slope whereby exchanges compete directly with broker-dealers absent comparable liability, a distinct advantage that ultimately picks winners and losers through the cover of regulation.

Finally, IEX filed this rule change as effective immediately. However, FIA PTG believes this filing raises significant market structure concerns, implicates fair access, and may be

⁶ *Id.*

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inconsistent with prior Commission guidance related to de minimis delays. We recommend the IEX proposal be re-filed under the normal 19b-4 process to allow the Commission to solicit comments and make an affirmative and fully informed determination to approve or disapprove the proposal.

For the reasons identified herein, we respectfully urge the Commission to reject the Proposal. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Joanna Mallers (jmallers@fia.org).

Respectfully,

FIA Principal Traders Group



Joanna Mallers

Secretary

cc: Walter J. Clayton, Chairman
 Michael S. Piwowar, Commissioner
 Kara M. Stein, Commissioner