May 15, 2020

Mrs. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Self-Regulatory Organizations; Investors Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Add a New Discretionary Limit Order Type Called D-Limit (Release No. 34-88501; File No. SR-IEX-2019-15)

Dear Secretary Countryman:

Better Markets[1] appreciates the opportunity to comment on the above-captioned notice ("Notice" or "Release") instituting proceedings to determine whether to approve or disapprove a rule proposal ("Rule," or "Order Type," or "D-Limit") by Investors Exchange LLC (IEX)—a self-regulatory organization (SRO) and a stock exchange—that would create a new order type at IEX.[2] We urge the Commission to approve the Rule as proposed by IEX. We have previously engaged with the Commission and often applauded its willingness to fix some of the deep structural challenges of our markets, and to promote market integrity and fairness for the benefit of investors and retirees.[3] In that same spirit, we believe—as do many other investor advocates— innovations

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] *See*, Release No. 34-88501; File No. SR-IEX-2019-15, 85 Fed. Reg. 18612 (April 2, 2020) *available* at https://www.govinfo.gov/content/pkg/FR-2020-04-02/pdf/2020-06856.pdf.

[3] On Reg ATS—strengthening oversight of Alternative Trading Systems—*See* Better Markets Comment Letter to the SEC on Regulation of NMS Stock Alternative Trading Systems, Release No. 34-76474, 80 Fed. Reg. 80998 (Dec. 28, 2015), *available* at https://www.sec.gov/comments/s7-23-15/s72315-23.pdf.

On Consolidated Audit Trail—empowering the regulator with mission-critical market surveillance tools—*See* Better Markets Comment Letter to the SEC on National Market System Plan Governing the Consolidated Audit Trail, Release No. 34- 77724; File No. 4-698, (Apr. 27, 2016), *available* at https://www.sec.gov/comments/4-698/4698-17.pdf, and for a complete list of Better Markets' activities on CAT, *see*, https://bettermarkets.com/Where-Is-The-CAT.

On Order Routing Disclosure—to increase transparency in markets and reduce conflicts of interests—*See* Better Markets Comment Letter to the SEC on Disclosure of Order Handling Information, Release No. 34-78309; File No. S7-14-16, 81 Fed. Reg. 49432 (July 27, 2016), *available* at https://www.sec.gov/comments/s7-14-16/s71416-17.pdf.

On Market Access and Data—urging the Commission to require increased transparency relating to market data and access—*See* Better Markets Comment Letter to Chairman Jay Clayton on Roundtable on Market Data and such as the one proposed by IEX must be green-lighted to better protect investors, restore investors' confidence in the fundamental fairness of our markets, and help the market foster other pro-investor innovations.

The dominant exchanges have failed to protect investors, and worse they have enabled and profited from the predatory actions of certain market participants that have preyed upon retail investors, savers, and retirees. The practices of these exchanges have driven investors (along with some of the brokers and market makers that serve them) away from exchanges and onto opaque, less-regulated trading venues. The resultant decline in transparency and displayed liquidity is a policy failure that can be mitigated with a market-driven innovation, which is why Better Markets supports the D-Limit rule proposal.

DESCRIPTION OF THE PROPOSAL

On December 16, 2019, IEX filed with the Commission a rule that proposes to create a new displayed order type for their exchange.[4] IEX is proposing a new Discretionary Limit order type "that is designed to protect liquidity providers from potential adverse selection by latency arbitrage trading strategies."[5] This new order type will complement and work in conjunction with another innovation IEX has introduced: the Crumbling Quote Indicator (CQI).

The CQI is an early warning tool that detects when the price of a security is unstable and is about to change against the interest of an investor. The proposal describes the CQI as a "transparent formula, codified in IEX's rulebook, designed to predict whether a particular quote is unstable or ''crumbling,'' meaning that the [national best bid] NBB is likely about to decline or the [national best offer] NBO is likely about to increase."[6] The CQI is used for the short period of time that quotes are unstable. IEX uses the CQI for both its Discretionary Peg (DPeg) and Primary Peg orders (PPeg).

COMMENTS

We believe the D-limit order will protect investors against predatory latency arbitrage trading strategies which will help in increasing the liquidity in the market. The Rule states that, "a D-Limit order which may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book, is priced to be equal to and ranked at the order's limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g)."[7] The D-limit orders will be protected from "stale prices" that predatory trading firms

Market Access, File. No. 4-729 (Oct. 25, 2018), *available* at https://www.sec.gov/comments/4-729/4729-4875182-177428.pdf.

On NMS Plans' Fees—supporting Commission's effort to increase transparency and accountability surrounding exchanges' ability to set fees—See Better Markets' Comment Letter on Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments, Release Nos. 34–87193, File No. S7–15–19, 84 Fed. Reg. 54794 (October 11, 2019) *available* https://www.sec.gov/comments/s7-15-19/s71519-6525334-200400.pdf.

4 *See*, "Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing of Proposed Rule Change To Add a New Discretionary Limit Order Type," 84 Fed. Reg 71997 (December 30, 2019), *available* at https://www.govinfo.gov/content/pkg/FR-2019-12-30/pdf/2019-28024.pdf.

5 *See* Release at 71997.

6 *See* Release at 71998

7 *See* Release at 71999

look for and take advantage of. The D-Limit order will protect orders from becoming stale by moving the orders to less aggressive prices while the CQI is on. The CQI is on for an average five seconds a day, during that time D-limit orders would be protected from the possibility of being traded at "stale prices." IEX's proposed order type would "thus extend the protective features of the CQI to displayed and non-displayed D-Limit orders to protect such orders from potential adverse selection by preventing them from trading at a price that IEX's CQI formula predicts is unstable and thus imminently stale."[8]

We believe that if the D-Limit Order type is approved as proposed, it should help IEX to protect liquidity providers—and by extension, investors—from fast predatory trading firms that take advantage of market participants due to stale prices of securities. These advantages allow predatory HFT firms to use latency arbitrage trading strategies. We concur with IEX's observation that, "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 (''NBBO''), representing the best displayed bid and offer prices that are available in the market at any point in time."[9] These informational disadvantages leave millions of investors and retirees at risk while allowing few predatory HFT firms to profit enormously.

<u>Legacy Exchanges' Self-interest—And Unacceptably Lax Regulatory Shortcomings—Have Created a Vicious Cycle That Must Be Broken</u>

Today, firms with the fastest and technologically most up-to-date capabilities can—and often do—exploit features of our current market infrastructure and rules that permit them to reap undue advantages. Profits earned by firms that engage in predatory trading strategies fund the purchase of exchange market data and connectivity (even as prices continue to rise) which are needed to execute predatory trading strategies. This has disenfranchised not just investors, but also the brokers and market makers that serve them. Early this year, the Commission's counterpart in the United Kingdom—the Financial Conduct Authority—published a groundbreaking study showing that these market structure failures cost investors in aggregate over $5 billion a year.[10]

These practices—and the market structure and rules that permit them—represent a hidden but enormous tax on savers and retirees. But unlike the taxes levied by governments, investors receive no benefits for it and have no ability to control it. The current market structure allows investors' order to be traded at stale prices. This discourages liquidity providers from entering the market. IEX's proposed D-Limit Order aims to eliminate these latency arbitrage trading strategies that disincentivize and discourage liquidity providers.

As this rampant latency arbitrage goes unchecked, the flight away from exchanges and into dark pools is a policy nightmare: robbing investors and markets of transparency, impairing price discovery and driving volume into less-regulated venues.

---

8 *See* Release at 72000

9 *See* Release at 71997

10 *See* "Ultrafast Trading Costs Stock Investors Nearly $5 Billion a Year, Study Says," Wall Street Journal (January 27, 2020), *available* at https://www.wsj.com/articles/ultrafast-trading-costs-stock-investors-nearly-5-billion-a-year-study-says-11580126036.

Innovation that protects investors is the key to bringing volume back onto exchanges—a markets-lead solution to break the vicious cycle. Competition is a key to fixing the displayed market and IEX must be given a chance to compete, particularly when their approach to competition keeps investors and integrity of markets as focal point of innovation.

CONCLUSION

We hope the Commission finds our comments helpful. In our view, the Commission should encourage market participants from offering innovative solutions that protect investors, promote market integrity with an on fair play, transparency, and investor empowerment. We believe the D-Limit Order will help level the playing field between market participants and encourage liquidity providers to enter the market. We urge the Commission to approve the Rule as proposed.

Sincerely,

Lev Bagramian

Lev Bagramian
Senior Securities Policy Advisor

Better Markets, Inc.
1825 K Street, NW
Suite 1080
Washington, DC 20006
(202) 618-6464

lbagramian@bettermarkets.com
www.bettermarkets.com