ModernIR
Market Structure Analytics™

12/8/2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
VIA EMAIL

RE: Investors' Exchange LLC Exchange Application (Release No.34-75925; File No. 10-222)

Dear Mr. Fields,

I'm writing to support the Investors' Exchange LLC's (IEX) application for registration as a National Securities Exchange.

ModernIR is a financial technology firm and the largest provider of next-generation market intelligence to publicly traded companies. For over a decade, we've used proprietary software, algorithms and mathematical models to translate trade-execution data in context of market rules into discrete price-setting market behaviors. Our objective is to help clients understand and consistently measure today's US equity market.

Since we're not traders, investors or market operators we have a unique perspective. Public companies ought to know where their shares are trading, and much more. As an Alternative Trading System currently, IEX is forthright in its disclosures. Its TOPS views provide trading data by ticker and cluster them by sector. IEX's ATS fee schedule (assuming comportment when IEX is an exchange) reflects simplicity that would fit on one PowerPoint slide: $0.09/100 to buy or sell, and $0.01/100 for routing[1]. Simple fees favor active investors, the issuer audience, rather than traders pursuing arbitrage profits.

From a trade-execution standpoint, routing requirements in the National Market System (NMS) give us insight on behalf of our clients into comparative trading behaviors. We can see that generally IEX trades aren't being offset by predatory activity, suggesting that its market offers a beneficial environment to the money public companies seek: long-term committed capital.

Without offense to the legacy exchanges, our intensive study of rules and trading behaviors has been revealing there in a different fashion. The NYSE's equity fee schedule is 25 pages long[2]. At the Nasdaq, Section 7018 of its rulebook, Nasdaq Market Center Order Execution and Routing[3], is a dense compendium

1 http://iextrading.com/trading/#pricing
2 https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf
3 http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_4_6_5_8&manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F

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of pricing data in html so it's difficult to compare accurately to the NYSE's list (plus, one must include comparative sections for the Nasdaq's BX, PSX and PHLX equity platforms[4]). But it's lengthy.

Give these price lists to the Chief Financial Officer whose company's shares are listed on the exchange and will he or she recognize the incongruity reflected in complex trading fees for a market supposedly serving issuers and investors? I don't know. But in a time-priority continuous-auction marketplace built around a single price-point manifesting in multiple places, quote-share and trade-share will determine price. Therefore, setting price is what makes data valuable. How to set price? Offer incentives. Why do exchanges want to set price? Because it's key to capturing data-revenue. More on that in a moment.

Complex fee schedules reflect incentive plans for traders. Outside the opening and closing auctions when prices for making and taking liquidity are the same, traders bringing significant volume to the exchanges receive favored treatment. All three big exchanges pay more for trades from big-volume customers than they charge, which is akin to spending more to buy products wholesale than one prices on the retail store floor. All three exchanges will also pay extra for trading securities from multiple tapes simultaneously[5]. For instance, trades for both Tape A and Tape B securities will generate a higher rebate for liquidity than trading just one. Implicit in that structure is the promotion of arbitrage.

That's not criticism per se. But for issuers, a structure that advances arbitrage as a principal price-setting device raises fundamental questions. It's unclear to me how these fee structures meet statutory imprimatur for just and equitable principles of trade. Regardless, it's misdirection for issuers that list their shares under the altruistic assumption that the market exists for them and their investors whose interests are presumed to be paramount (paraphrasing a June 2014 speech by SEC Chair Mary Jo White[6]).

Back to why exchanges set prices, it's our belief that access-fee structures are designed to enhance exchange data-revenues. Whether that's good or bad requires further debate but as it pertains to IEX's admission to the group of NMS exchanges, a simple structure that isn't predicated principally on generating data that can be turned into revenue is appealing to an issuer constituency. The essential driver behind trades should be interested natural buyers and sellers, not arbitrage and incentives.

In that vein, it deserves mention here that the Consolidated Tape Association determines how consolidated-tape data revenues are shared among the membership to which IEX aspires. That IEX intends to approach access-fees differently should generally be welcome to those exchanges monetizing data, since apparently it's not IEX's intention to emphasize competition with them in the data market.

And speaking of purpose, neither Congress nor the Securities and Exchange Commission imagined a market system comprised of machined cogs. The Exchange Act (USC 15 Section 78f)[7] nowhere prescribes the construction of exchanges nor mandates that all look alike. In fact, that notion is antithetical to the meaning and tenor of the Act, the stated purpose of which is to remove impediments to and perfect the mechanism of a free and open market. That by definition is one with vibrantly diverse form and function. And a marketplace where competitors can block new entrants via the rulemaking process is neither free nor open.

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[4] http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2

[5] Regulation National Market System capped access fees at $0.30/100 traded shares and all three major US exchange groups offer trading rebates in excess of that level, ranging from $0.31-$0.45/100 traded shares.

[6] http://www.sec.gov/News/Speech/Detail/Speech/1370542004312

[7] Cornell University hosts a reference guide for the United States Code, and the referenced section may be viewed here: https://www.law.cornell.edu/uscode/text/15/78f

In sum, if the market exists for issuers and their investors, then IEX is a welcome addition and we look forward to a future NMS with greater listing and trading opportunities for the shares of issuers that at root are the essence of the capital markets.

Yours Sincerely,

Tim Quast
President