February 11, 2016

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

RE: Investors' Exchange, LLC; Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934; Release No. 34-75925; File No. 10-222.

Dear Mr. Fields:

BATS Global Markets, Inc. ("BATS") withdraws its support for the IEX application for registration as a national securities exchange. BATS previously submitted two comment letters in favor of IEX's above-referenced application for registration as a national securities exchange.[1] In our letters of support for the IEX application, BATS highlighted only one area of concern deserving of comprehensive Commission review regarding the IEX's affiliated broker-dealer router that creates a unique competitive advantage over other broker-dealers, which BATS believes to be inconsistent with the standards required of registered national exchanges.

Despite our concern, BATS supported the IEX application because BATS has seen the beneficial impact that innovation and competition has had on the quality of our equity markets. BATS has been honored to play a significant role in driving that innovation and competition – launching in 2006 as an ATS, registering as an exchange first in 2008, and growing into one of the largest exchange operators in the world; competing on the basis of our people, our technology and our pricing. We believe that we are duty bound to support new entrants like IEX into this market so they can deliver additional innovation and competition. While we will continue to support innovative models like IEX, we believe we are also duty bound to withdraw our support when we see repeated instances as we do here of an applicant making gross misrepresentations before the Securities and Exchange Commission ("SEC") and the public about the operations of other exchanges in an effort to preserve aspects of its business model that may be inconsistent for registered national exchanges under the Exchange Act. In addition, this applicant has launched a public relations campaign deploying similar misrepresentations and gross omissions of fact regarding its own business.

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1 *See* Letter from Eric Swanson, General Counsel, BATS, to Brent Fields, Secretary, SEC (November 3, 2015, *available at* https://www.sec.gov/comments/10-222/10222-9.pdf; *and* Letter from Eric Swanson, General Counsel, BATS, to Brent Fields, Secretary, SEC (December 20, 2015), *available at* https://www.sec.gov/comments/10-222/10222-256.pdf.

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While we continue to support innovation and competition, we have serious concerns about entrusting a registered national securities exchange license – a license which conveys self-regulatory and quasi-governmental authority – to an applicant whose repeated misrepresentations of facts to the SEC and the public, some of which are detailed below, call into question the applicant's professional judgment. We are, therefore, withdrawing our support for the IEX's application for registration as a national securities exchange.

Misrepresentation #1

On November 13, 2015, IEX submitted a comment letter to the SEC in which it argued that a 2012 rule change by Nasdaq that allowed "routable orders to simultaneously execute against Nasdaq available shares and route to other markets" was prior precedent for the IEX router sending orders to other markets while IEX delayed transmission of information about the portion of such orders that were first filled on IEX.[2] This representation was patently false, and IEX either knew that it was false or was reckless in not conducting additional due diligence to attempt to verify its claim before stating it as fact before the SEC and the public. As noted by Nasdaq in its response of January 29, 2016:[3]

> "IEX has pointed to a rule change filed by Nasdaq in 2012 and has made inaccurate depictions and comparisons in its regulatory and legislative sales material regarding the Nasdaq routing broker. Accordingly, we want to set the record straight. IEX's proposed routing procedures differ from Nasdaq's in one key respect: no one, other than IEX's routing broker, would be permitted to know about an execution on IEX until the execution report is transmitted through IEX's speed bump. As commenters have pointed out, the preprogrammed delay in transmission of transaction reports would incentivize market participants to use IEX's router in order to avoid the negative effects of the delay and would thereby provide IEX with an artificial competitive advantage.
>
> In contrast, Nasdaq does not impose any artificial delays in its order processing or data transmission functionality. The 2012 filing made a fairly simple change to several of the choices that Nasdaq makes available to members that want to use Nasdaq's facilities to execute orders and route remaining shares to other trading venues. Specifically, under the 2012 filing a member can send an order to Nasdaq and direct it to execute as much of the order as possible on Nasdaq; upon receipt of the order, Nasdaq also sends a message to its routing broker-dealer, Nasdaq Execution Services, LLC ("NES"), to send shares that cannot be executed on Nasdaq to competing trading venues for execution. Nasdaq also transmits information about the execution of shares on Nasdaq back to the originating member and to the public via proprietary and consolidated data feeds.

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2 Letter from Sophia Lee, General Counsel, IEX, to Brent Fields, Secretary, SEC (November 13, 2015), *available at* https://www.sec.gov/comments/10-222/10222-20.pdf.

3 Letter from Joan C. Conley, Secretary, Nasdaq, to Brent Fields, Secretary, SEC (January 29, 2016), *available at* https://www.sec.gov/comments/10-222/10222-350.pdf.

> The idea is to make all events associated with each order – execution on Nasdaq, routing of shares that cannot be executed on Nasdaq, and transmission of information – occur as close in time to one another as possible. Similarly, a competing routing broker that sends an order to Nasdaq receives immediate confirmation of a transaction on Nasdaq and can route to other venues accordingly. Because competing routers are permitted to operate in proximity to Nasdaq's matching engine, and because Nasdaq immediately transmits information about executions, competing routers do not face a speed disadvantage vis-à-vis NES. Prior to the 2012 filing, however, Nasdaq did not send unexecuted shares to NES for routing to other trading venues until after it had processed the entire order through the Nasdaq book. By processing the entire order, including shares that could not be executed on Nasdaq, before sending the order to NES, Nasdaq was effectively treating its own routing broker worse than other routing brokers. The change made in 2012 rectified that inequity."[4]

This stands in sharp contrast to the manner in which IEX operates – orders are partially filled on IEX, and the imbalance is immediately routed away while the report of execution on IEX is intentionally delayed, thereby giving investors using IEX a head-start prior to the trade execution report being received by IEX's members and, therefore, giving the IEX affiliated routing broker-dealer an unfair competitive advantage over other broker-dealers.

Misrepresentation #2

On January 31, 2016, IEX posted an op-ed to its website[5] arguing that the NYSE effectively had an undisclosed "speed bump" for certain market participants because it offered access to its exchanges through both FIX and Binary protocols, and that the Binary protocol was a faster means of access to the exchanges. IEX went further, implying that NYSE charged a premium to access the faster Binary protocol and thereby created an unlevel playing field between market participants. IEX contrasted its model, which slows everyone down (except, of course, its affiliated routing broker-dealer), as being more fair for investors.

Again, this claim is patently false and IEX either knew it was false or was reckless in not conducting additional due diligence to verify the validity of its claim before publishing it as fact. As noted by the NYSE in its response to this claim,[6] the FIX and Binary protocols serve different needs, one cannot be said to be better than the other, and there is no difference in cost for using either of them:

> "NYSE Group provides members access to its exchanges using two different types of protocols, FIX and binary. A protocol is nothing more than the language

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4 *Id.*

5 https://iextrading.com/about/press/op-ed/.

6 Letter from Elizabeth King, General Counsel, NYSE, to Brent Fields, Secretary, SEC (February 8, 2016), *available at* https://www.sec.gov/comments/10-222/10222-375.pdf.

spoken by computer systems that process messages. Because most trading is electronic, messages are used to transfer data between market participants, including between trading venues and their members or participants. There are two protocols offered by NYSE Group, each of which costs exactly the same. Members of the exchange choose the option that best suits their needs – with many choosing both.

FIX is a protocol that has been in use since the 1990s. FIX is a standard protocol across the financial services industry, and is used by all major exchanges, dark pools, bulge bracket brokers, and institutional asset managers. FIX has the benefit of offering firms great flexibility and features, and often can be more easily integrated into a firm's back office and client reporting systems -- which typically also standardize around FIX protocols. The FIX protocol enables a broker-dealer that has clients who use FIX, or is a member of several exchanges and dark pools, to use a single protocol to communicate across its business.

Many exchanges, dark pools and brokers also offer a binary protocol. Binary protocols allow for the more efficient use of bandwidth, partly because it offers fewer special features than FIX. For firms who seek a protocol that minimizes bandwidth and reduces data storage costs, a less bulky protocol like binary might be more suitable.

One computer protocol cannot be said to be inherently better than the other, and, importantly, neither has any artificial delay built into it by NYSE. IEX claims that, by offering a choice of protocols, NYSE is intentionally giving some market participants an advantage over others and providing this advantage to those willing to pay more, while failing to disclose any of it. IEX's claims are false. As is disclosed on our website, NYSE provides all firms with the same access to both protocols at the same price and leaves it solely to the customer to decide which computer interface meets its needs."[7]

Contrary to IEX's misrepresentations, NYSE is not offering an undisclosed protocol to customers who are willing to pay for it. Both the FIX and Binary protocols are equally available to all, serve different needs, are fully disclosed on the NYSE's website and are offered at the same price.

Misrepresentation #3

Finally, on February 9, 2016, IEX submitted a comment letter to the SEC[8] in which it argues that its affiliated broker-dealer router does not impose a competitive burden on other

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7 *Id.*

8 Letter from Sophia Lee, General Counsel, IEX, to Brent Fields, Secretary, SEC (February 9, 2016), *available at* https://www.sec.gov/comments/10-222/10222-380.pdf.

broker-dealer routers. In support of its argument, IEX referenced a routing option available on BATS called ALLB, which allows clients to remove liquidity from all four BATS markets with a single order. According to IEX, this routing option available on BATS provides an "'insurmountable advantage' versus a serial router . . . because that [serial] router would have to first route to BATS-Z, for example, and then only after receiving a fill from BATS-Z, route to BATS-Y and so on to the two other BATS exchanges (EDGA, EDGX). A broker using a serial router can only accomplish this using four separate orders and would incur a substantial timing disadvantage versus the BATS ALLB router, which can accomplish it 'with a single order.'"[9]

Again, this claim is patently false and IEX either knew it was false or was reckless in not conducting additional due diligence to verify this claim before stating it as fact to the SEC and the public. While it is true that a BATS member need only send one order to a BATS exchange to effect the ALLB strategy, BATS does not have a magic router that can simultaneously access all four exchanges with one order. Instead, BATS' affiliated routing broker-dealer must send separate orders to each of its exchanges, behaving no differently than any other broker-dealer router that may want to accomplish the same thing as ALLB.

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BATS supports competition and innovation amongst exchanges, including new entrants who can demonstrate not only the operational readiness to comply with the requirements for registered national securities exchanges, but, more critically, the professionalism, transparency and accuracy expected of an entity granted the rights afforded a registered national securities exchange. BATS and other commentators have raised truly valid market structure concerns regarding the application, which BATS believes could be reasonably resolved in a manner so as not to prevent IEX from obtaining an exchange license. However, IEX has repeatedly demonstrated, through its public misstatements, its public relations campaign and its reckless misrepresentations to the SEC and the public, an inability to satisfy the basic tenets of being a national securities exchange. As such, BATS withdraws its support for IEX's application for registration as a national securities exchange. Please feel free to contact me at [redacted] if you have any questions related to this matter.

Sincerely,

Eric Swanson
EVP and General Counsel

Cc: Mary Jo White, Chair

9 *Id.*

Michael Piwowar, Commissioner
Kara Stein, Commissioner
Stephen Luparello, Director, Division of Trading & Markets
Gary Goldsholle, Deputy Director, Division of Trading & Markets
David Shillman, Associate Director, Division of Trading & Markets
Dan Gray, Senior Special Counsel, Division of Trading & Markets