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October 13, 2016

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

Re: CHX Liquidity Taking Access Delay
Release No. 34-78860; File No. SR-CHX-2016-16

Dear Mr. Fields:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to comment on the proposal by the Chicago Stock Exchange, Inc. ("CHX") to introduce a new type of speed bump, the Liquidity Taking Access Delay ("LTAD"), and to express our concerns about this proposal to the Securities and Exchange Commission (the "Commission").

In summary, we believe the CHX proposal should not be approved because it is not consistent with the Securities Exchange Act of 1934 (the "Exchange Act") and Regulation NMS ("Reg NMS"). In our view, the proposal: (i) is not designed to protect investors and the public interest; (ii) would permit unfair discrimination; and (iii) would impose unnecessary, inappropriate burdens on competition.

Background

[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).

As we wrote to the Commission in connection with Investors' Exchange LLC's ("IEX") exchange application and the accompanying proposed interpretation, we are concerned about the fundamental incompatibility of speed bumps with Reg NMS.[2] We believe that allowing intentional delays of protected quotes not only contradicts the language of Reg NMS, but also creates troublesome distortions in US equity market structure.[3] Nonetheless, we recognize that after several modifications and clarifications, the Commission decided to allow the IEX proposal and to approve IEX's intentionally delayed market with protected quote status.[4]

The CHX Proposal

While we are concerned about the precedent set by the Commission's IEX approval, we believe the IEX symmetrical speed bump is easily distinguished from the one-way speed bump proposed by CHX, and for a variety of reasons discussed in this letter, the CHX rule proposal should be disapproved and the LTAD should not be allowed.

The CHX proposal is different from IEX's speed bump, in that it would not apply to all order and cancellation messages equally. The LTAD would apply only to marketable orders, and not to resting orders or cancellations. It has been designed to make it more difficult for market participants to access quotes by giving a small number of automated traders who post those quotes extra time to move their quotes out of the way when the market appears to be moving against them.

Many of our members might be in a position to benefit from the LTAD; however, we believe that it would be a negative development for US equity market structure, add unwarranted complexity, and create a bad precedent for this and other types of discriminatory artificial delays.

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[2] *See* Letter from Mary Ann Burns, Chief Operating Officer, FIA to Brett J. Fields, Secretary, Commission, dated April 14, 2016 (the "FIA PTG IEX Letter"), at 5 (noting "the [IEX] intentional access delay would harm market transparency and degrade the value of the NBBO. We expect the Proposed Interpretation to lead directly to lower fill rates as venues refuse to fill orders when it appears that a delayed venue has a better price based on intentionally stale information. Lower fill rates harm market quality by leading to wider effective spreads, a transaction cost passed on to investors.").

[3] In the FIA PTG IEX Letter, we lamented the inevitable spiraling complexity that would come from multiple exchanges introducing different flavors of speed bumps across the market ecosystem. We explained how the IEX proposal and proposed interpretation **"…risk[ed] turning the national market system into a hall of mirrors where it's impossible to know which prices are real and which are latent reflections**" and that "the proposed interpretation would lead to multiple exchanges experimenting with different forms of sub-millisecond delays. Other exchanges have already expressed their intent to do so, if allowed, so the Commission would be opening the floodgates to a plethora of exchanges with protected quotes, all of which could have intentional delays of different lengths and with different implementations, ushering in a new era of uncertainty and gamesmanship in the national market system." *See* FIA PTG IEX Letter, *supra* note 2, at 6 (Emphasis Added).

[4] Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (the "IEX Approval").

The Commission specifically considered the idea of an asymmetric speed bump in its Commission Interpretation Regarding Automated Quotations Under Regulation NMS[5] where it noted that an access delay that is only imposed on certain market participants or certain types of orders would raise concerns under the Exchange Act.[6] Unlike the IEX speed bump, which applies to all order and cancellation messages equally, the LTAD would simply not be the same as a geographical delay.[7] Where the IEX delay could be thought of as moving the matching engine a certain distance from all market participants, the proposed LTAD could not be accomplished by moving the CHX data center, but only through software that distinguishes between types of order messages. For all but the few traders advantaged by the LTAD, this would impose unnecessary, inappropriate burdens on competition. Under Reg NMS, traders would in some circumstances be required to route to quotes on CHX, only to have the quotes canceled at the last moment due to the unfair latency burden imposed by the LTAD.

Additionally, the CHX proposal is unfairly discriminatory. Allowing some market participants to have an advantage over others frustrates the purposes of Rule 611 by impairing fair and efficient access to an exchange's quotations.[8]

Moreover, the CHX proposal is not designed to protect investors and the public interest, but rather, it appears to be designed to help some automated market participants to quote but *not to trade*. This has several implications. First, it should be noted that SIP market data revenue is allocated to exchanges in part based on their quoting activity and CHX shares its SIP market data revenue with participants that contribute to its market data revenue allocation. As such, there is a financial benefit to CHX and its favored market participants if they can quote in a way that result in high SIP payments without having to take the risk of trading. In addition, the ability to cancel quotes before market participants

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5 Securities Exchange Act Release No. 78102 (June 17, 2016) (the "Commission Interpretation").

6 "An exchange that proposed to provide any member or user (including the exchange's inbound or outbound routing functionality, or the exchange's affiliates) with exclusive privileged faster access to its facilities over any other member or user would raise concerns under the Act, including under Section 6(b)(5) and 6(b)(8) of the Act, and would need to address those concerns in a Form 1 exchange registration application or a proposed rule change submitted pursuant to Section 19 of the Act, as applicable." *Id.* at 26, note 74. "A proposed access delay that is only imposed on certain market participants or certain types of orders would be scrutinized to determine whether or not the discriminatory application of that delay is unfair .... If the Commission cannot find that a proposed access delay is consistent with the Act, it would disapprove the proposal, rendering moot the issue of whether a quotation with such a delay is protected. Generally, the Commission would be concerned about access delays that were imposed only on certain market participants or intentional access delays that were relieved based upon payment of certain fees."). *Id.* at 27, note 75 (Citations Omitted).

7 *See e.g.*, IEX Approval, *supra* note 4, at 49 note 196 (noting "... by way of analogy, that this is equivalent to a trading center locating its matching engine a certain distance (equivalent to the distance traversed during the POP/coil delay) from its nearest user or, alternatively, not permitting any user to be located closer than that distance to the matching engine.").

8 The IEX Approval indicated the IEX speed bump was seen as being "so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to exchange's quotations." *See* IEX Approval, *supra* note 4, at 77.

react to them could potentially institutionalize market manipulation schemes such as "spoofing" by lowering the risk of spoofing quotes being executed against. Also, some market participants, particularly institutional traders, have expressed concern about so-called "flickering quotes". We are concerned that order types such as the LTAD might encourage that market behavior and legitimize these concerns.

Finally, we are concerned that the LTAD would be a violation of the Firm Quote Rule under Rule 602 of Reg NMS since it is designed to allow liquidity providers to back away from their quotes.

Conclusion

The LTAD can be thought of as CHX giving certain market participants the ability to travel up to 350 microseconds back in time, allowing "time travelling" traders to change their minds about their willingness to trade based on information gained in the future.

We respectfully request that the Commission disapprove the CHX proposal and the Liquidity Taking Access Delay.

The entire debate about various kinds of speed bumps highlights the need for a holistic market structure review. In 2015, FIA PTG published a brief set of recommendations for simplifying the US equity market structure.[9] These recommendations included the elimination of the requirement to avoid displaying locked and crossed markets (Rule 610.d) and the elimination of the order protection rule (Rule 611). Both of these rules were originally put in place, in part, to help assure that brokers were achieving best execution for their clients. Today we believe however that best execution can be addressed much more simply by clarifying and modernizing the best execution requirements that brokers already have, rather than by sustaining this extremely complex backstop managed by the trading venues. We believe the elimination of both Rules 610.d and 611 along with the modernization of the best execution requirements will simplify the markets in meaningful ways and provide other important benefits for the investing public.

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[9] *See* FIA PTG, *Simplifying U.S. Equity Market Structure* (January 28, 2015), *at* http://ptg.fia.org/sites/default/files/content_attachments/FIA%20PTG%20Position%20-%20Simplifying%20US%20Equity%20Market%20Structure.pdf

If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Joanna Mallers ([redacted]).

Respectfully,

FIA Principal Traders Group

Joanna Mallers

Joanna Mallers
Secretary

cc: Mary Jo White, Chairwoman
Kara M. Stein, Commissioner
Michael S. Piwowar, Commissioner
Stephen Luparello, Director, Division of Trading & Markets