February 3, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549

Re: ***SIFMA Comment Letter on IEX Proposed Rule Change to Add a New Discretionary Limit Order Type; File No. SR-IEX-2019-15***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] respectfully submits this letter to comment on the proposed rule change by the Investors Exchange LLC ("IEX") to offer a new discretionary limit order type ("D-Limit Order").[2] We strongly support innovation in the U.S. equity markets. IEX has certainly provided some unique offerings to the marketplace over the years that have benefited certain market participants. For the reasons discussed more fully below, however, with respect to the proposed D-Limit Order, SIFMA is concerned about quote accessibility as a result of a displayed limited order being repriced based on IEX's crumbling quote indicator ("CQI"), especially if there is broader adoption of the order type by other exchanges.[3] We believe that these concerns could be lessened if IEX were to offer this order type as "un-protected".

By way of background, SIFMA has previously expressed concern with asymmetrical speed bumps and their impact on U.S. equity market structure,[4] as a proposed alternative for

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1 SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

2 *See* Securities Exchange Act Release No. 87814 (Dec. 20, 2019).

3 Although the views among our members are not uniform, most of our members expressed concerns with the IEX proposal.

4 *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Vanessa Countryman, Secretary, Securities and Exchange Commission dated July 18, 2019 ("SIFMA 2019 Letter"); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Brent J. Fields, Secretary, Securities and Exchange Commission dated May 17, 2017 ("SIFMA 2017 Letter");

liquidity provision. SIFMA commends IEX for its proposal to provide another alternative for liquidity provision. With each such alternative, however, SIFMA believes that the SEC should carefully consider and address broader market implications of any new proposed exchange functionality and order types that are offered by one exchange given that they could then be offered by other exchanges. In considering whether to approve this order type, the SEC should assume that other exchanges would adopt similar order types when considering the implications on the national market system.

Quote Accessibility Under the Order Protection and Firm Quote Rules of Regulation NMS

SIFMA acknowledges that the D-Limit Order is advantageous to the user of the order type, and as IEX states in its filing, is designed to protect against adverse selection. However, consideration also needs to be given to the impact on an order attempting to seek liquidity from a posted D-Limit Order (including both retail and institutional orders). Broker-dealers will be required to access displayed D-Limit Orders (*i.e.*, IEX's protected D-Limit quote) to meet their Order Protection Rule obligations under Regulation NMS. Such access to IEX's protected quote would be required to traverse the IEX speed bump, while the re-pricing logic employed by IEX would bypass the speed bump, thereby effectively creating an asymmetrical speed bump. Therefore, if the CQI were to trigger and reprice that displayed order, the IEX protected quote that broker-dealers are attempting to access would no longer be there at the price that they are trying to execute against, thereby raising questions regarding whether the quote is in fact accessible and firm.

SIFMA questions whether the proposed D-Limit Order meets the requirements to be considered an automated quotation for purposes of the Order Protection Rule ("OPR") and the Firm Quote Rule of Regulation NMS.[5] In the SEC's 2016 revised interpretation of "immediate", the SEC stated the following:

> "As explained further below, the Commission's revised interpretation provides that the term "immediate" precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation unless such delay is *de minimis* in that it would not impair a market participant's ability to fairly and efficiently access a quote, consistent with the goals of Rule 611."[6]

The SEC's guidance contemplates that any *de minimis* intentional delay should not impact a market participant's ability to access a quote. Allowing repricing functionality to bypass IEX's speed bump while orders attempting to access such quote traverse the speed bump would render

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Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Brent J. Fields, Secretary, Securities and Exchange Commission dated December 16, 2016 ("SIFMA 2016 Letter") .

[5] 17 CFR 242.611. 17 CFR 240.11Ac1-1.

[6] SEC Staff Guidance on Automated Quotations under Regulation NMS (June 17, 2016).

the quote inaccessible.

IEX itself acknowledges that while CQI is triggered, D-Limit quotes would be inaccessible. In IEX's own words: "Even though D-Limit orders may not be accessible to other market participants during these narrow time frames, the Exchange does not believe that the impact is unfairly discriminatory because during the vast majority of time D-Limit quotes will be accessible. Moreover, the purpose of limiting such accessibility is to incentivize liquidity providers to post displayed liquidity on IEX by protecting them…."[7] IEX asks the Commission, however, to overlook the inaccessibility of these D-Limit quoted because the quotes will be accessible most of the time.[8]

In addition, IEX provides that the D-Limit Order price adjustment functionality is consistent with the Firm Quote Rule "in that it will not result in a meaningful amount of quote "fading" compared to the quote fading, both explicit and implicit, that exists and is permitted today."[9] SIFMA does not believe that there is currently a *de minimis* threshold to the Firm Quote Rule and permitting it could further erode the integrity of a displayed quotation and therefore should be carefully contemplated by the SEC.

<u>**Comparison to Other Exchange Order Types and IEX's Discretionary Pegged Orders**</u>

IEX cites other exchange discretionary and price sliding order types as precedent for the D-Limit Order.[10] These other discretionary order type, however, allow exchanges to automatically adjust the quotation prices based on changes in then-current market prices and to comply with certain regulatory requirements – and the ability to interact with such orders is not subject to a speed bump on these other exchanges. By contrast, IEX's proposed D-Limit Order would adjust its displayed quotation via the CQI based on its assumption that prices are likely going to change. Furthermore, it is important to note that when the SEC was considering IEX's peg order types with discretion and CQI functionality for non-displayed orders, the SEC specifically stated the following in its approval:

> "Importantly, the Commission notes that the Exchange's amended primary peg order type would remain a non-displayed order type, like all of the Exchange's pegged order types, including the discretionary peg order type. Thus, the proposed amended primary peg order type, with its added discretionary and crumbling quote determination functionalities, should not impact the Exchange's dissemination of a protected quotation, which must be displayed, or market participants' ability to execute against the Exchange's protection quotation, and does not appear otherwise designed to impede the

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7 Proposal at 23.

8 *Id*.

9 Proposal at 24.

10 Proposal at 24 – 26.

> mechanism of a free and open market. Accordingly, the Commission believes that the proposed amendments to the Exchange's primary peg order type are consistent with the Act and, in particular, the Section 6(b)(5) requirement that a national securities exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest."

SIFMA notes that such SEC approval was premised on the order type not being displayed and not impacting market participants' ability to execute against it, so expansion to displayed orders in the form of the D-Limit Order would appear to be inconsistent with the prior approval.

Precedent and Market Implications of Broader Adoption

As with all exchange order type and functionality, SIFMA recommends that the SEC weigh the precedent set if it were to approve IEX's proposed order type with broader adoption and broader market implications. A novel question for the SEC to consider is whether an exchange should be permitted to bypass the speedbump it imposes on all other market participants to reprice displayed orders. IEX provides the CQI is triggered on average only 0.0007% of the trading day for each security; however, they also note that 24% of displayed executions occur within this period. It is important to consider that most of the liquidity on IEX is "dark"/non-displayed and therefore based on its limited lit liquidity, the number of times CQI is triggered is relatively small. However, if one or more exchanges with significant lit liquidity were to offer the same D-Limit Order or similar order types, this functionality would exacerbate the number of inaccessible quotes in the marketplace.

Alternative to Offer D-Limit Order as "Un-Protected"

SIFMA believes that one way to address quote accessibility concerns is to treat D-Limit Orders/quotes as "un-protected" for OPR purposes. This would allow IEX to offer the D-Limit Order but would also allow market participants the ability to avoid inaccessible quotes on IEX. If IEX decides to offer the D-Limit Order as "un-protected", the same issues that SIFMA raised with respect to Cboe EDGA's asymmetrical speedbump proposal, including clarity around a broker-dealer's best execution obligation, would need to be addressed.[11] Additionally, the SEC would have to consider whether the order type should be included in the determination of the NBBO, calculation of Rule 605 statistics and mid-point values and dissemination on the SIP.[12]

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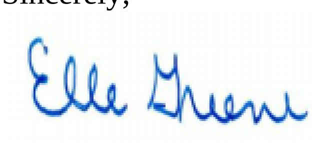
[11] *See* SIFMA 2019 Letter at 3.
[12] *Id*.

SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact me at 212-313-1287 or egreene@sifma.org.

Sincerely,



Ellen Greene
Managing Director
Equity and Options Market Structure

cc: The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner

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