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March 10, 2017

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

Re: Release No. 34-79998; File No. SR-NYSEMKT-2017-05

Dear Mr. Fields:

Investors Exchange LLC ("IEX") is pleased to comment on the proposal ("Proposal") by NYSE Group ("NYSE") to apply an intentional delay to certain electronic messages to and from one of its affiliated markets, NYSE MKT LLC ("MKT").[1] IEX believes that the Proposal is substantially deficient in both justification and detail. Without additional information, market participants and members of the public are unable to properly evaluate the Proposal and offer informed comment. Thus, the Proposal should be either refiled or disapproved.

Background

Briefly, the Proposal states that NYSE would apply a software change to its Pillar platform that would add a delay "that is an equivalent of 350 microseconds of latency" to all inbound communications from any ETP Holder (as that term is defined in MKT's rules). The same delay would be applied to all outbound communications to any ETP Holder. NYSE would delay all messages to MKT's proprietary data feeds, but would not delay reports to the plan processors for the market-wide consolidated data feeds. Messages concerning routable orders would be subject to certain additional delays after first matching against available trading interest on MKT's order book.

In its rule filing, NYSE says that the Proposal is "based in part" on the intentional delay (the so-called "speed bump") used by IEX as part of its exchange architecture. As support for why the Proposal meets the standards for approval under the Securities Exchange Act of 1934 ("Exchange Act"), NYSE states only that the Proposal would promote free and open markets because it would involve a "similar delay" as the SEC recently approved for IEX,[2] and that it would protect investors and serve the public interest because it would provide more choice of exchanges for market participants.[3]

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[1] *See February 9, 2017)* Securities Exchange Act Release No. 79998 (February 9, 2017), 82 FR 10828 (February 15, 2017).
[2] *Id.at 3.*
[3] *Id.*at 11-12.

NYSE aggressively opposed IEX throughout its nine-month application process in public statements, comment letters to the Commission, and through less public means. Many of its objections focused on the speed bump. Among other claims, NYSE alleged that approval of the speed bump would create an unfair advantage for IEX, harm investors on other markets, "create a calamity", and "lead to less transparent markets, wider spreads, and higher costs for investors". Further, NYSE took the position that *any* intentional delay imposed by an exchange would result in market-wide harm.[4]

Deficiencies in the Proposal

Ironically, NYSE is now proposing its own version of a speed bump, and it gives as the only justification that it wants to offer more choice in exchanges. But NYSE says nothing about *its* choices in putting forth the Proposal, how it thinks investors and the quality of the markets will be affected, or how MKT would compare in those respects from the three other exchanges it operates. Especially considering its prior statements, we think NYSE is required to provide a complete explanation to gain approval under the standards set by the Exchange Act.

Accordingly, we think that NYSE must provide additional justification and detail to allow the public and the Commission to better evaluate its Proposal. In particular:

- Does NYSE continue to believe that any intentional delay causes market harm? If so, how can it justify the Proposal?
- Does NYSE continue to believe that a speed bump on one market (MKT) would unfairly harm investors on other markets, including the three other exchanges it owns (NYSE, NYSE Arca, NSX)? If so, how can it justify a proposal that it believes would harm execution quality on other exchanges that it has responsibility for?
- If NYSE instead believes that the Proposal will protect investors and promote fair and orderly markets, it should explain how and why.

The Proposal is also deficient in the level of detail provided as to the operation of the delay, including how it will operate in conjunction with comprehensive rule changes related to MKT's planned conversion to the Pillar platform, which were filed on the same day the Proposal was filed (the "Related Filing").[5] Among the questions requiring further clarification are these:

- How did NYSE determine to set the duration of the delay at 350 microseconds? To what extent did NYSE account for unique geographical factors affecting MKT in relation to other exchanges?

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[4] *See* letters to Brent J. Fields, Secretary, SEC, from Elizabeth K. King, General Counsel and Secretary, NYSE Group, dated November 12, 2015, April 18, 2016, and April 27, 2016.
[5] *See* Securities Exchange Act Release No. 79993 (February 9, 2016), 82 FR 10814 (February 15, 2017).

- How would the implementation of the delay through a software change impact its effectiveness and variability? How will MKT determine and monitor the permissible amount of variability?
- The rule filing indicates that routable orders will first access any liquidity on MKT's order book, will then be routed to other markets, and that an additional delay will be applied before routing to such markets. How will this additional delay affect the potential that quotes on other markets will vanish before the routed orders are received by them, to the detriment of members who send routable orders?
- In the Related Filing, NYSE indicates that, in a separate filing, it will provide for the use on MKT of electronic designated market makers ("DMMs").[6] Will all communications with DMMs be subject to the proposed delay? If so, will that be accomplished by the same software change, and what impact, if any, would result on the functioning of the DMMs?
- Some member firms that are New York Stock Exchange DMMs are also MKT DMMs (trading from the same physical location), and NYSE has indicated this will continue to be true after the transition to the Pillar platform. In addition, NYSE recently proposed to relax the restrictions that currently limit the ability of DMMs to trade securities other than the listed securities that are assigned to them.[7] What informational advantages or conflicts could arise when the same DMMs are trading on both markets, when only one of those markets is subject to a speed bump?

Conclusion

IEX believes that vigorous competition among markets is important to market efficiency and benefits investors. But exchanges are more than profit seekers. When asking the SEC for approval to change the way they operate, they are expected to provide sufficient information to allow informed public comment and to explain how and why they believe the changes they propose will affect fair and orderly markets, transparency, investor protection, and the public interest. NYSE is entitled to change its mind about the impact of speed bumps on market quality. But when it offers its own version, and especially in light of all its past statements, it can't choose to stay silent.

Sincerely,

John Ramsay
Chief Market Policy Officer

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[6] *Id.* at 3

[7] Securities Exchange Act Release No. 80019 (February 10, 2017) at 5, 82 FR 10943 (February 16, 2017).