April 23, 2020

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: File Number SR-IEX-2019-15: Self-Regulatory Organizations; Investors Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Add a New Discretionary Limit Order Type Called D-Limit ("**IEX Proposal**")

Dear Madam:

The Committee on Capital Markets Regulation (the "**Committee**") appreciates the opportunity to comment on a proposed rule change filing by the Investors Exchange LLC ("**IEX**") with the Securities and Exchange Commission (the "**SEC**").[1]

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean emeritus, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Orders on IEX's exchange are currently subject to a 350 microsecond "speed bump" – an intentional time-delay between the receipt of an order by an exchange and its execution.[2] However, IEX's proposal would create "discretionary limit orders" that are effectively exempt from the speed bump.[3] It would thereby potentially establish an *asymmetric* speed bump. IEX claims that

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[1] U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Organizations; Investors Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Add a New Discretionary Limit Order Type Called D-Limit*, 85 FED. REG. 18,612 (April 2, 2020), https://www.federalregister.gov/documents/2020/04/02/2020-06856/self-regulatory-organizations-investors-exchange-llc-order-instituting-proceedings-to-determine [the "**IEX Proposal**"]. *See also*, U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing of Proposed Rule Change To Add a New Discretionary Limit Order Type*, 84 FED. REG. 71,997 (Dec. 30, 2019), https://www.federalregister.gov/documents/2019/12/30/2019-28024/self-regulatory-organizations-investors-exchange-llc-notice-of-filing-of-proposed-rule-change-to-add.
[2] IEX Proposal, *supra* note 1, at 18,613.
[3] IEX Proposal, *supra* note 1, at 18,613.

the IEX Proposal will protect liquidity providers from liquidity takers that are executing so-called latency arbitrage trading strategies.[4]

The Committee has previously expressed its opposition to asymmetric speed bumps, because they distort markets by conferring a trading advantage on market participants that use order types that are exempt from the speed bump.[5] For this reason, the Committee has repeatedly reiterated its position that any speed bumps "should be equally applied to all market participants."[6] The IEX asymmetric speed bump would potentially confer a trading advantage on liquidity providers, such as market makers, that post "discretionary limit orders," at the expense of liquidity *takers* that can include retail and institutional investors.

When the SEC rejected CBOE's proposed asymmetric speed bump in February 2020, it stated that: (i) exchanges bear the burden of demonstrating why proposed rules are consistent with the requirements of the Exchange Act; and (ii) CBOE failed to meet this burden.[7] In particular, when a proposed rule discriminates against different order types or market participants, the exchange must present "specific and detailed information" for the SEC to make an affirmative finding that the rule does "not permit unfair discrimination."[8] The Committee supports this standard of review and encourages IEX to provide specific and detailed information as to why the IEX Proposal would not permit unfair discrimination.

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Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Prof. Hal S. Scott (hscott@law.harvard.edu), or Executive Director, John Gulliver (jgulliver@capmktsreg.org), at your convenience.

Respectfully submitted,

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[4] IEX Proposal, *supra* note 1, at 18,612-18,613.

[5] COMMITTEE ON CAPITAL MARKETS REGULATION, *Nothing But The Facts: Asymmetric Speed Bumps in U.S. Equity Markets*, 3-4 (Dec. 4, 2019), https://www.capmktsreg.org/2019/12/04/nothing-but-the-facts-asymmetric-speed-bumps-in-u-s-equity-markets/.

[6] COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to SEC re Notice of Filing of a Proposed Rule Change to Introduce a Liquidity Provider Protection on EDGA* (July 17, 2019), https://www.capmktsreg.org/2019/07/17/committee-submits-comment-letter-to-sec-regarding-the-proposed-rule-change-to-introduce-a-liquidity-provider-protection-feature-on-cboe-edga-equities-exchange/; COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to CFTC re: Amendment to ICE Futures U.S., Inc. Rule 4.26* (Mar. 14, 2019), https://www.capmktsreg.org/2019/03/14/committee-submits-comment-letter-to-the-commodity-futures-trading-commission-on-ice-futures-u-s-inc-s-proposed-amendment-to-its-order-execution-rule/; COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter on SEC re Notice of Filing of Proposed Rule Change to Adopt the Chicago Stock Exchange Liquidity Taking Access Delay* (Oct. 13, 2016), https://www.capmktsreg.org/wp-content/uploads/2016/10/chx201616-6.pdf.

[7] U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Order Disapproving Proposed Rule Change To Introduce a Liquidity Provider Protection Delay Mechanism on EDGA*, 85 FED. REG. 11,426, 11,429 (Feb. 27, 2020), https://www.federalregister.gov/documents/2020/02/27/2020-03915/self-regulatory-organizations-cboe-edga-exchange-inc-order-disapproving-proposed-rule-change-to [the "**CBOE Speed Bump Order**"].

[8] CBOE Speed Bump Order, *supra* note 7, at 11,428-11,432.

Robert Glenn Hubbard

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