

MEMO# 29782

March 22, 2016

SEC Proposes Interpretation Regarding Automated Quotations Under Regulation NMS

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 9-16 RE: SEC PROPOSES INTERPRETATION REGARDING AUTOMATED QUOTATIONS UNDER REGULATION NMS

On March 18, 2016, the Securities and Exchange Commission (“SEC”) proposed an interpretation of Rule 611 of Regulation NMS in connection with its consideration of an application by Investors’ Exchange (“IEX”) for registration as a national securities exchange. [\[1\]](#) Rule 611 prohibits trade-throughs of protected quotations, i.e., the best-priced “automated quotations” [\[2\]](#) of exchanges. The SEC’s proposed interpretation would clarify that a quotation can be an “automated quotation” for purpose of Rule 611 even if the trading center posting the quotation incorporates a de minimis time delay, whether intentional or not, in processing the order.

In its exchange application, IEX proposes to impose 350 microseconds of one-way latency on users by requiring all messages from users to enter the exchange through a single point-of-presence (“POP”) and traverse a coiled fiber optic cable and additional physical distance to the IEX trading system. Certain market participants have raised concerns about whether the POP/coil latency complies with Regulation NMS. The SEC proposes to interpret Rule 611 of Regulation NMS to permit the latency introduced by IEX’s POP/coil. The SEC’s proposed interpretation would make clear that a trading center’s quotations are automated—and receive protection under Rule 611—even if the trading center incorporates a de minimis delay in its response time.

The Commission requests comment on all aspects of its proposed interpretation, including:

- Would delays of less than a millisecond in quotation response times impair a market participant’s ability to access a quote or impair efficient compliance with Rule 611?
- In the current market, should the Commission interpret “immediate” as including a de minimis delay of less than one millisecond? Should the Commission consider other lengths? If so, what should they be?
- Should the Commission be concerned about market manipulation? If so, specifically, what should the Commission focus on?

- Should the Commission consider an alternative interpretation? If so, what should it be?

The comment period on the proposed interpretation closes 21 days after the publication of the proposal in the Federal Register, which is expected soon. ICI does not anticipate commenting on this proposed interpretation.

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endnotes

[1] Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS, March 18, 2016, available at <https://www.sec.gov/rules/interp/2016/34-77407.pdf>. In a separate notice on March 18, the SEC deferred the date for approving or disapproving IEX's application to June 18, 2016, from March 21, 2016. See Investors' Exchange LLC; Notice of Filing of Amendment Nos. 2, 3, and 4 to, and Order Instituting Proceedings to Determine Whether to Grant or Deny, and Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Grant or Deny, an Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto, March 18, 2016, available at <https://www.sec.gov/rules/other/2016/34-77406.pdf>. The comment period for this notice closes 21 days after its publication in the Federal Register, which is expected soon.

[2] Rule 600(b)(3) of Regulation NMS defines an automated quotation as one that (i) permits an incoming order to be marked as immediate-or-cancel ("IOC"); (ii) immediately and automatically executes an IOC order against the displayed quotation up to its full size; (iii) immediately and automatically cancels any unexecuted portion of an IOC order without routing the order elsewhere; (iv) immediately and automatically transmits a response to the sender of an IOC order indicating the action taken with respect to such order; and (v) immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.