

Securities Regulation Daily Wrap Up, TOP STORY— Proposal would extend Reg NMS protection for some intentional quotation delays, (Mar. 21, 2016)

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The SEC is seeking comment on a proposed interpretation involving the definition of “automated quotation” under Rule 600 of Regulation NMS. The proposal is a response to extensive comments the SEC received in connection with the application of Investors’ Exchange, LLC (IEX) for registration as a national securities exchange. IEX is known for employing a microsecond delay in connectivity to its trading platform ([Release No. 34-77407](#), March 18, 2016).

The interpretation. The SEC’s proposal would interpret “immediate” when determining whether a trading center maintains an “automated quotation” for purposes of Rule 611 of Regulation NMS to include response time delays at trading centers that are de minimis, whether intentional or not.

Application of IEX. IEX, currently operating as an alternative trading system, has represented in its application that access to IEX by all users would be obtained through a “point of presence” (POP) located in Secaucus, New Jersey. According to IEX, after entering through the POP, a user’s electronic message sent to the IEX trading system would traverse the IEX “coil,” which is a box of coiled optical fiber cable approximately 38 miles long. After exiting the coil, the user’s message would travel an additional physical distance to the IEX system, located in Weehawken, New Jersey. According to IEX, the coil, combined with the physical distance between the POP and the IEX system, would provide IEX users sending non-routable orders to IEX with 350 microseconds of one-way latency.

A number of commenters have asserted that the POP and coil access delay would preclude IEX’s best-priced quotation from being a protected quotation under Regulation NMS, an assertion that IEX and several commenters dispute.

Proposed SEC interpretation. The SEC said that it preliminarily believes that IEX's proposed POP/coil structure raises questions about prior statements with respect to the definition of an "automated quotation" under Regulation NMS. In light of market and technological developments since the adoption of Regulation NMS in 2005, the SEC is requesting comment on an updated interpretation to permit more flexibility for trading centers with respect to automated quotations to allow them to develop innovative business models that do not undermine the goals of Rule 611 of Regulation NMS.

Regulation NMS. In general, Rule 611 under Regulation NMS (the "Order Protection Rule") protects the best automated quotations of exchanges by obligating other trading centers to honor those quotes by not executing trades at inferior prices or trading through such best automated quotations. Only an exchange that is an "automated trading center" displaying an "automated quotation" is entitled to this protection.

Comments on IEX application. Commenters have cited language from the Regulation NMS adopting release where the SEC elaborated on what it means for a quotation to be an "automated quotation," including statements that the term "immediate," as it relates to the definition of an automated quotation, means that a "trading center's systems should provide the fastest response possible with any programmed delay and precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation."

Several commenters proposed that the SEC provide guidance apart from the decision on IEX's application.

Response to changes. According to the SEC release, when Regulation NMS was adopted, the SEC was focused on the response time delays generated by manual interaction, and crafted exceptions to Rule 611 based on response times of one second. Delays in the realm of sub-milliseconds, as presented by the IEX application, were not contemplated by the SEC because they generally were not relevant or material for the slower trading technologies used by market participants at the time, according to the SEC.

The SEC said in the release that it preliminarily believes that, in the current market, delays of less than a millisecond in quotation response times may be at a de minimis level that would not impair a market participants ability to access a quote, consistent with the goals of Rule 611 and because such delays are within the geographic and technological latencies experienced by market participants today.

Solicitation of comment. The SEC requests comment on all aspects of its proposed interpretation, including:

1. 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?
2. In the current market, should the SEC interpret "immediate" as including a de minimis delay of less than one millisecond? Should the SEC consider other lengths? If so, what should they be?
3. Should the SEC be concerned about market manipulation? If so, specifically, what should the SEC focus on?
4. Should the SEC consider an alternative interpretation? If so, what should it be?

Comments should be received on or before 21 days after publication in the *Federal Register*.

The Release is [No. 34-77407](#).

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