



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

July 3, 2012

Janet McGinness  
EVP & Corporate Secretary  
General Counsel, NYSE Markets  
20 Broad Street  
New York, NY 10005

Re: Request for No-Action Relief From Rule 602 of Regulation NMS Submitted In Connection With Proposals To Establish A Retail Liquidity Provider Program (SR-NYSE-2011-55 and SR-NYSEAmex-2011-84)

Dear Ms. McGinness:

This responds to your letter dated April 11, 2012, wherein you request that the staff of the Division of Trading and Markets provide you with written assurance that it will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") pursuant to Rule 602 of Regulation NMS<sup>1</sup> (the "Quote Rule") with respect to certain activity contemplated by the operation of a Retail Liquidity Provider Program (the "Program") proposed by NYSE LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex" and together with NYSE, the "Exchanges").<sup>2</sup> Specifically, you request that the staff not recommend

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<sup>1</sup> 17 CFR 242.602.

<sup>2</sup> See Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774 (SR-NYSE Amex-2011-84); and 65672 (November 2, 2011), 76 FR 69788 (SR-NYSE-2011-55). The Exchanges have amended their proposed rule changes twice. The first amendment, filed on January 17, 2012, is described in the Commission's Order Instituting Proceedings to determine whether to disapprove the proposed rule changes. See Securities Exchange Act Release No. 66346 (February 7, 2012), 77 FR 7628 (February 13, 2012). The second amendment was published in the Federal Register for notice and comment on March 1, 2012. See Securities Exchange Act Release No. 66464 (February 24, 2012), 77 FR 12629.

On May 14, 2012, NYSE Amex filed a proposed rule change, immediately effective upon filing, to change its name to NYSE MKT LLC. See SR-NYSEAmex-2012-32. To remain consistent with the previous documents that were submitted in connection with

enforcement action against: (1) the Exchanges for failing to collect, process, and make available to vendors the best bid, best offer, and quotation sizes communicated by members of the Exchanges pursuant to Commission Rule 602(a) or (2) the liquidity providers pursuant to Commission Rule 602(b)(1).<sup>3</sup>

As you described in your letter and the proposed rule changes, the Program would establish an alternative venue for the execution of retail orders. The Program would create two new classes of market participants (Retail Member Organizations and Retail Liquidity Providers), a new order type (Retail Orders), and a new form of price-improving interest (Retail Price Improvement Orders). Retail Member Organizations would submit Retail Orders<sup>4</sup> representing orders from retail investors to the Exchanges. Retail Liquidity Providers and other members of the Exchanges would submit Retail Price Improvement Orders that would execute against the Retail Orders. Retail Price Improvement Orders would express firm interest to price-improve on the best protected bid or offer (“PBBO”) by at least \$0.001 or more per share. The Exchanges propose to disseminate a Retail Liquidity Identifier through the Consolidated Quotation System to notify market participants of the existence of Retail Price Improvement Orders. The identifier would reflect the symbol for a particular security and the side (buy or sell) of the Retail Price Improvement Order interest, but it would not include the price or size of such interest.

The Quote Rule requires national securities exchanges to, among other things, make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any national securities exchange by any responsible broker or dealer.<sup>5</sup> The Quote Rule also requires each responsible broker or dealer to promptly communicate to its national securities exchange or national securities association, pursuant to the procedures established by that exchange or association, its best bids, best offers, and quotation sizes for any subject security.<sup>6</sup> A “bid” or “offer” is defined as the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to

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these proposals, the Commission will refer to NYSE MKT LLC as NYSE Amex throughout this response.

<sup>3</sup> On July 3, 2012, the Commission approved the proposed rule changes. See Securities Exchange Act Release No. 67347.

<sup>4</sup> The definition of Retail Order would be limited to immediate or cancel agency orders that originate from a natural person rather than a trading algorithm or any other computerized methodology.

<sup>5</sup> 17 CFR 242.602(a)(1).

<sup>6</sup> 17 CFR 242.602(b)(1).

any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.<sup>7</sup> You state that the Retail Price Improvement Orders, considered on their own or together with the Retail Liquidity Identifier that indicates their existence, do not meet the definition of "bid" or "offer" in Commission Rule 600(b)(8) because they do not communicate a specific price.

Based on the terms of the Program and the facts and representations contained in your letter, the staff will not recommend enforcement action to the Commission, either against the Exchanges or against Retail Liquidity Providers, under the Quote Rule relating to the kind of information disseminated through the Retail Liquidity Identifier. This no-action position is premised on the Program's operation pursuant to a pilot or permanent status approved by the Commission. If the pilots expire without the Commission permanently approving the Program, the staff's no-action position will be withdrawn immediately upon expiration of the pilots.

You should understand that this is a staff position with respect to enforcement only and is provided solely to respond to your request. This letter does not purport to state or imply any legal conclusions, including any conclusion as to whether your receipt of this letter was necessary or appropriate in order to operate the Program or any conclusions relating to the issues addressed in the Commission's proposed rulemaking regarding the regulation of non-public trading interest.<sup>8</sup> The staff's position is based on the facts and representations you have made concerning the operation of the Program. The no-action position stated herein is subject to modification or revocation at any time.

Sincerely,



David S. Shillman  
Associate Director

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<sup>7</sup> 17 CFR 242.600(b)(8).

<sup>8</sup> See Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009).

April 11, 2012

**VIA FEDERAL EXPRESS**

Robert Cook, Esq.  
Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Request for No-Action Relief from Rule 602 of Regulation NMS ("Quote Rule")

Dear Mr. Cook:

NYSE LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex," collectively with NYSE, the "Exchanges") for the reasons set forth below request assurance from the staff of the Division of Trading and Markets ("the staff") that the staff will not recommend enforcement action pursuant to Regulation NMS Rule 602 ("the Quote Rule") with respect to the proposed Retail Liquidity Program's ("the Program") dissemination of a Retail Liquidity Identifier ("the liquidity flag" or "RLI") or the Retail Price Improvement Orders ("RPI") advertised by the RLI upon implementation of the Program after receiving approval from the Securities and Exchange Commission ("Commission"). In particular, the Exchanges ask for assurance that the staff will not recommend such action against (1) the Exchanges for failing to collect, process, and make available to vendors the best bid, best offer, and quotation sizes communicated by members of the Exchanges pursuant to Rule 602(a), or (2) liquidity providers pursuant to Rule 602(b)(1).

**Background**

On October 19, 2011, the Exchanges filed with the Commission a proposed rule change to establish on a one-year pilot basis a Retail Liquidity Program. The Program seeks to establish a venue for the execution of retail orders with greater price competition and transparency than existing execution arrangements.<sup>1</sup> Following a notice and comment period and a designation by the Commission on December 19, 2011 of a longer period for Commission action,<sup>2</sup> the

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<sup>1</sup> See Securities Exchange Act Release No. 65671 (November 2, 2011), 76 FR 69774 (SR-NYSEAmex-2011-84); 65672 (November 2, 2011), 76 FR 69788 (SR-NYSE-2011-55).

<sup>2</sup> See Securities Exchange Act Release No. 66003, 76 FR 80445 (December 23, 2011).



Exchanges submitted a consolidated response on January 3, 2012<sup>3</sup> to the 32 comment letters received, and Amendment No. 1 to the proposal on January 17, 2012. On February 7, 2012, the Commission issued an order instituting proceedings to determine whether to disapprove the proposal, as modified by Amendment No. 1 (“the February 7th Order”).<sup>4</sup>

The Commission stated in the February 7th Order that the proposal raised “novel market structure issues that warrant further comment and Commission consideration” and referenced the following as possible grounds for disapproval of the proposal: (1) the proposal’s inconsistency with the Sub-Penny Rule in allowing RPIs to be accepted and ranked in sub-penny increments; (2) the breadth of the proposal’s definition of Retail Orders; and (3) the precision of the description of the Program’s liquidity flag. The Commission stated that the Exchanges should provide additional detail regarding the proposed liquidity flag to “allow the Commission and commenters to assess whether the Quote Rule is implicated and, if so, to understand whether the Exchanges intend to comply with or seek an exemption from some or all of its requirements.”<sup>5</sup>

Concurrently with the initial filing of the proposal, the Exchanges filed a request for exemptive relief under the Sub-Penny Rule describing the Program’s consistency with the policy objectives of the Sub-Penny Rule and its furtherance of the public interest and protection of investors.<sup>6</sup> The Exchanges amended the request for exemptive relief on January 13, 2012.<sup>7</sup> On February 16, 2012, the Exchanges filed Amendment No. 2 to the proposal, which (1) narrows the scope of the Program’s definition of Retail Order to address the concerns expressed by the Order, and (2) provides clarifying details with respect to the Program’s proposed liquidity flag.<sup>8</sup> This letter discusses the proposed liquidity flag and its consistency with the Quote Rule, and seeks no action relief from the staff with respect to the Quote Rule’s potential application to the liquidity flag and the orders it advertises.

### **The Retail Liquidity Program**

The proposed Program seeks to attract retail order flow to the Exchanges by creating a venue that would offer enhanced price competition and transparency and thereby deliver better

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<sup>3</sup> See Letter to the Commission from Janet McGinness, Senior Vice President—Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated January 3, 2012 (“Exchanges’ Response Letter”).

<sup>4</sup> See Securities Exchange Act Release No. 66346, 77 FR 7628 (February 13, 2012) (“Order Instituting Proceedings”).

<sup>5</sup> *Id.* at 7633.

<sup>6</sup> See Letter from Janet M. McGinness, Senior Vice President—Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated October 19, 2011 (“Sub-Penny Rule Exemption Request”).

<sup>7</sup> See Letter from Janet M. McGinness, Senior Vice President—Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated January 13, 2012 (“Amended Sub-Penny Rule Exemption Request”).

<sup>8</sup> See Securities Exchange Act Release No. 66464 (February 28, 2012), 77 FR 13170 (SR-NYSE-2012-13).



prices to retail investors. Before summarizing the relevant features of the Program, it is worth underscoring a basic premise of the Program: the execution of retail orders today occurs in a largely segmented environment. Specifically, broker-dealers executing retail orders today do not compete for those orders by offering aggressive prices in a competitive market mechanism, but rather through bilateral internalization arrangements.<sup>9</sup>

The Commission has recognized this segmentation and its underlying economics, stating that “[l]iquidity providers generally consider the orders of individual investors very attractive to trade with because such investors are presumed on average not to be as informed about short term price movements as are professional traders.”<sup>10</sup> While continuing to express broad market structure concerns with respect to internalization arrangements, the Commission has specifically noted that the arrangements offer certain benefits to retail investors.<sup>11</sup>

The Program would establish two new classes of market participants (Retail Member Organizations and Retail Liquidity Providers), a new order type (Retail Orders), and a new form of price-improving interest (RPIs). Retail Member Organizations would submit Retail Orders to the Exchanges. Retail Liquidity Providers would then be required to submit RPIs, which provide potential price improvement in the form of non-displayed interest that is priced better than the best protected bid or offer (“PBBO”).

A Retail Order is strictly defined under the Program as an agency order submitted by a Retail Member Organization that originates from a natural person and not a trading algorithm or any other computerized methodology.<sup>12</sup> In order to become a Retail Member Organization, an Exchange member organization must conduct a retail business or handle retail orders on behalf of another broker-dealer. The member organization must submit an application with supporting documentation and an attestation to the Exchange that the order flow would qualify as Retail Orders. Retail Member Organizations must obtain yearly written representations from broker-dealers sending Retail Orders and monitor the broker-dealers’ order flows to meet the requirements of the Program. Retail Member Organizations are subject to disqualification for failure to comply with the requirements of the proposed rule. Each of these requirements stems in large part from Program’s premise of the segmentation of execution of retail order flow.

Retail Liquidity Providers also would have to be approved by the Exchanges. A Retail Liquidity Provider would be required to submit RPIs, priced better than the PBBO by at least

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<sup>9</sup> See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3606 (“Equity Market Structure Release”) (“[B]rokers with significant retail customer accounts send the great majority of non-directed marketable orders to OTC market makers that internalize executions, often pursuant to payment for order flow arrangements.”).

<sup>10</sup> *Id.* at 3612.

<sup>11</sup> *Id.* at 3597.

<sup>12</sup> As a result of Amendment No. 2, the definition of Retail Order has been narrowed to exclude proprietary orders seeking to liquidate positions established as a result of interaction with Retail Orders.



\$0.001, for securities that are assigned to the Retail Liquidity Provider. More than one member organization could act as a Retail Liquidity Provider for a security, and a member organization could act as a Retail Liquidity Provider for more than one security. Other Exchange member organizations would be allowed, but not required, to provide liquidity under the Program by submitting RPIs. The principal benefit of becoming an approved Retail Liquidity Provider would be lower fees paid to the Exchanges under the Program. The Retail Liquidity Provider must maintain RPIs that are better than the PBBO at least 5% of the trading day for each assigned security.

The Exchanges would rank RPIs according to price and then time of entry. The price of an RPI would be determined by the liquidity provider's entry of the following into the Exchanges' systems: (1) RPI buy or sell interest; (2) an offset, if any; and (3) a floor or ceiling price. The Exchanges expect that RPI buy or sell interest typically would be entered to track the PBBO. The offset would be a predetermined amount by which the liquidity provider is willing to improve the PBBO, subject to a floor or ceiling price. The floor or ceiling price would be the amount below or above which the liquidity provider does not wish to trade. The combination of the three components will, in effect, form a non-displayed book of RPIs that are ranked and executed according to price-time priority. All RPIs will be automatically executable. Incoming Retail Orders will execute at the price of the last RPI required (or available) to satisfy the Retail Order.

Both Retail Orders and RPIs may be odd lots, round lots, or part of round lot orders. RPIs would be ranked without regard to whether the size entered is an odd lot, round lot, or part of round lot amount, and Retail Orders would interact with RPIs according to the priority and allocation rules of the Program without regard to whether they were odd lots, round lots, or parts of round lots.

Importantly, liquidity providers under the Program would compete for execution priority with respect to incoming Retail Orders. A given liquidity provider, in other words, would not be assured of its ability to interact with an incoming order because a competing liquidity provider entering a larger offset—that is, offering greater price improvement to the Retail Order—would achieve execution priority with its more competitive order. So, while the tracking component of the RPI would be derived from prices made outside the Program, the offset component, the competition between liquidity providers, and the price-time priority of the Program would incentivize liquidity providers to *make new, more aggressive prices* than those currently available to retail investors.<sup>13</sup>

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<sup>13</sup> Contrast the incentive of liquidity providers in the Program to be first at the best price, with the “last mover” advantage afforded to participants in the flash order process as described by the Commission. “For example, the flash process provides a vehicle for certain market participants to match displayed prices on an order-by-order basis by responding to flashes. It therefore gives these participants a ‘last-mover’ advantage over displayed orders in other markets. Rather than displaying their orders or quotations in advance of incoming marketable order flow to attract an execution, these market participants can wait to receive the flashed order and program their systems to pick and choose when to execute.” Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48636. Liquidity providers under the Program have no opportunity to interact with Retail Orders if they do not enter the best-priced RPI *in advance of incoming*



In order to attract Retail Orders to the Program and to fuel price competition among liquidity providers, the Exchanges have proposed to disseminate a liquidity flag called a Retail Liquidity Identifier. The RLI would reflect the presence but not the price of RPIs. In particular, the Exchanges initially would disseminate the liquidity flag through Exchange proprietary data feeds, and as soon as practicable, through the Consolidated Quotation System.<sup>14</sup> The liquidity flag will contain the symbol for the particular security and the side (buy or sell) of the trading interest, but will not include the price or size of the RPI interest. As noted above, there is no minimum size for RPIs or Retail Orders; round lots, odd lots, and portions of round lots are all accepted without distinction under the Program.

### **Applicable Law**

#### **Origin and Purpose of the Quote Rule.**

In summarizing the Quote Rule as originally adopted in 1978, the Commission stated simply that it required exchanges and other specified market centers “to make available quotations (including size) in all reported securities in which that market center is making a market” and made clear that “quotations made available pursuant to the Rule [were] required to be ‘firm,’ subject to certain exceptions.”<sup>15</sup> The Quote Rule’s adoption followed “largely unsuccessful” private efforts to develop a composite quotation system and the continued dissemination by exchanges of “bid and asked price data which [did] not represent ‘firm’ quotations. . . .”<sup>16</sup> More fundamentally, the Rule sought to meet the need identified by the 1975 Amendments “for a prompt, accurate and reliable central quotation reporting system.”<sup>17</sup>

The Quote Rule underwent significant and impactful amendments in conjunction with the Commission’s adoption of the Limit Order Display Rule in 1996.<sup>18</sup> Designed “to ensure that more comprehensive quotation information is made available to the public[,]” those amendments were a response to the Commission’s concern following an exhaustive investigation and investigative report concerning trading practices in the Nasdaq market about the development of private markets with better prices for professionals than those visible and accessible to the public:

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*marketable order flow to attract an execution.* Moreover, in point of further contrast, the Program does not disseminate *any* information about the existence of a marketable order on a pre-trade basis.

<sup>14</sup> Based on preliminary conversations with members, the Exchanges learned that the industry preferred to see the RLI integrated into the public market data stream. As a result, the Exchanges incorporated this request into Amendment No. 1.

<sup>15</sup> Securities Exchange Act Release No. 14415 (January 26, 1978), at \*1.

<sup>16</sup> *Id.* at \*2.

<sup>17</sup> S. Rep. No. 75, 94th Cong., 1st Sess. 8-9 (1975).

<sup>18</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (“Order Execution Obligations Release”).



Over the course of the last decade, certain trading systems that allow market makers and specialists to widely disseminate significant trading interest to certain market participants without making this trading interest available to the public market at large have become significant markets in their own right. Although offering benefits to some market participants, widespread participation in these hidden markets has reduced the completeness and value of publicly available quotations contrary to the purposes of the NMS.<sup>19</sup>

The 1996 amendments had the effect of requiring specialists and market makers to reflect in their public quotes any better-priced orders they broadly displayed by market makers through ECNs.<sup>20</sup>

### **Discussion**

The Exchanges appreciate the profoundly positive impact that the Quote Rule, as amended, has had on the National Market System, and understand the Commission's caution with respect to the definitions that determine the scope of the rule. With the above background and this recognition in mind, we discuss below why the Program is consistent with the Quote Rule.

The obligations of exchanges to disseminate quotations under Reg. NMS Rule 602(a), and those of responsible brokers and dealers to communicate prices and quotation sizes to exchanges under 602(b) depend on the definition of "bid" or "offer" under Rule 600(b)(8) which states in pertinent part:

*Bid or offer* means the bid price or the offer price communicated by a member of a national securities exchange . . . to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of any NMS security, as either principal or agent, but shall not include indications of interest.<sup>21</sup>

The Exchanges believe that the non-displayed trading interest entered into the Exchanges' systems in the form of RPIs, considered either on their own or together with the liquidity flag that indicates their existence, do not meet the definition of "bid" or "offer" in Rule 600(b)(8).

To meet the definition, a bid or offer must include a price. Neither the RPIs nor the liquidity flag that advertises them communicate a specific price to any broker-dealer or customer: the RPI remains at all times non-displayed and the liquidity flag does not contain a specific price. The Exchanges understand that the Commission's Proposed Rule on Regulation of Non-Public Trading Interest ("the Dark Liquidity Proposal") would amend the definition of bid or

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<sup>19</sup> *Id.* at 48290, 48307.

<sup>20</sup> *Id.* at 48291.

<sup>21</sup> 17 C.F.R. 242.600(b)(8).



offer set forth in Rule 600(b)(8) to include “actionable IOIs,” which apparently would include messages without prices but where pricing information can be inferred from market conditions.<sup>22</sup> Importantly, however, the Dark Liquidity Proposal does not express a Commission view that actionable IOIs are quotes under current regulation and must be treated as such pending adoption of the Dark Liquidity Proposal. Rather, the Proposal characterizes actionable IOIs as “functionally similar” to displayed quotes.<sup>23</sup>

In addition, the Program as proposed has the potential to produce better prices for retail investors, a core goal of the National Market System in general and the Quote Rule in particular. As set forth in the Exchanges’ Second Amended Exemptive Application Pursuant to Rule 612(c) (“the Sub-Penny Exemptive Application”), the Program would enhance price competition for retail orders and increase the level of order interaction experienced by retail investors.<sup>24</sup> Specifically, as noted above, the Program’s multiple liquidity providers would compete for execution priority with respect to incoming Retail Orders by being ranked first at the best price. Moreover, because liquidity providers would not be able to see competing orders, they would be incentivized to *make new, more aggressive prices* rather than simply match existing prices.

The Exchanges believe this introduction of price competition into what are currently bilateral, and relatively static, internalization arrangements has the potential to produce better prices for retail investors. The Exchanges further believe that the RLI as proposed will be an important component of the effort to attract liquidity providers and Retail Orders to the Program. Given the longstanding nature of many internalization arrangements, the identification of liquidity, including side, may be necessary to attract the attention of those handling retail flow and lead them to consider becoming Retail Member Organizations. Moreover, because liquidity providers will be required to compete based on price improvement for execution priority under the Program, the Program’s success will depend almost entirely on the attraction of a viable stream of Retail Orders. In other words, the absence of the guaranteed ability to interact with a particular stream of retail order flow that exists in current internalization arrangements will have to be offset by the presence of multiple streams of Retail Orders in the Program.

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<sup>22</sup> The Dark Liquidity Proposal describes actionable IOIs as effectively alerting “the recipient that the dark pool currently has trading interest in a particular symbol, side (buy or sell), size (minimum of a round lot of trading interest), and price (equal to or better than the national best bid for buying interest and the national best offer for selling interest).” Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208, 61211 (“Dark Liquidity Proposal”).

<sup>23</sup> *See id.*

<sup>24</sup> The Sub-Penny Exemptive Request identifies two other grounds favoring relief from the Sub-Penny Rule: (1) the liquidity maintenance obligations of the Program offer a framework for more stable liquidity provision to Retail Orders; and (2) the Exchanges offer a robust regulatory and surveillance alternative to existing oversight of internalization. Both of these grounds, while not discussed herein, also favor relief from the Quote Rule. We ask that pages 6 to 11 of the Sub-Penny Exemptive Application be incorporated by reference into this request for relief.



Second, the Program, and in particular the proposed RLI, would enhance the quality of pricing information available to market participants. As discussed more fully in the Exchanges' Response to Comments,<sup>25</sup> current internalization arrangements do not depend in any meaningful way on the displayed quotes of the broker-dealers interacting with retail order flow. There is, consequently, relatively little quotation or pre-trade pricing information related to those arrangements currently available to those routing retail orders. The Program's dissemination of a liquidity flag identifying the presence of RPIs would represent an important advance in pre-trade transparency within the current retail order execution segment.

The Commission, in adopting the 1996 amendments to the Quote Rule, referenced the Congressional mandate of quote transparency and its underlying rationale:

Congress considered the public availability of quotation information to be critical to fair and competitive markets because published quotations provide investors, their brokers, and other market participants with essential information about the condition of the market. This information assists investors in making investment decisions and in finding the best market for a security, while making it possible for investors to evaluate the quality of their executions.<sup>26</sup>

In summarizing the amendments, the Commission stated that they were "designed to ensure that more comprehensive quotation information is made available to the public."<sup>27</sup>

Among the market structure conundrums produced by the segmentation of retail order flow is that liquidity providers interacting with retail orders will not bid as aggressively for orders that do not originate with natural persons. The reason is plain: professional traders are more likely to be highly informed as to short term price movements than natural persons. A highly informed counter party means, in the short term, a less profitable trading opportunity. Liquidity providers, therefore, will not enter quotations, which would require them to "execute any order to buy or sell" presented to it by "another broker dealer"<sup>28</sup> at price levels they are willing to provide a retail investor. As a practical matter, this means that the interest of internalizing broker-dealers typically will not make its way into a displayed quote. For precisely this reason, the Program could not function if RPIs (assuming away sub-penny complications) were required to be displayed as quotes.<sup>29</sup>

The Program does not and cannot, in other words, transform internalizing trading interest into firm, displayed quotes. What the liquidity flag does offer in its proposed form (including

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<sup>25</sup> Exchanges' Response Letter at 15.

<sup>26</sup> Order Executions Obligations Release at 48291.

<sup>27</sup> *Id.* at 48291.

<sup>28</sup> 17 CFR 242.602(b)(2).

<sup>29</sup> This is another way of saying the premise of segmentation is critical to the Program.



symbol and side, but not price and size), is the opportunity to integrate *more comprehensive pricing* information into the public quote. This advance in transparency squarely favors relief from the Quote Rule that would allow the Program to operate as proposed.

Third, the Program represents a competitive response on the part of the Exchanges to bilateral internalization arrangements, and offers the potential of continued and beneficial competition in the retail execution segment. As stated in the Exchanges' Response to Comments, the Exchanges regard the Program as an important but structurally modest effort by the Exchanges to attract retail order flow. As proposed, the participants, structure, and economics of the Program would parallel practices that have operated in more or less their current form for well over a decade.<sup>30</sup> The RLI in its proposed form is an important component of the Program's effort to attract liquidity providers and Retail Orders to the Program, and to stimulate price competition within the Program. To the extent that liquidity providers decide to compete with the Program rather than within the Program for retail orders, that competition, presumably fuelled with execution quality data, will present brokers handling retail orders with choices. If, for example, liquidity providers wish to provide either proprietary or more generally disseminated liquidity flags such as the RLI to advertise appropriately liquidity they are willing to provide, those choices will be even more fully informed. With more execution choices and more information, brokers handling retail orders will be in a position to drive a higher level of price competition for retail orders.

Echoing the belief expressed during the 1996 amendments to the Quote Rule that the "private" display of better prices "reduces the reliability and completeness of consolidated quotations,"<sup>31</sup> the Commission has recently focused on related concerns with respect to flash orders<sup>32</sup> and non-public trading interest<sup>33</sup> more generally. With respect to the former, the Commission has warned that "[t]he flashing of order information could lead to a two-tiered market in which the public does not have access, through the consolidated quotation data streams . . . ."<sup>34</sup> With respect to dark pools, an analogous concern has been expressed regarding actionable IOIs being "'lit' to a select group of market participants and dark with respect to the rest of the public."<sup>35</sup> As stressed throughout, the RLI bears none of the features giving rise to these concerns. As proposed, the RLI would be disseminated to the public through the public quote stream. No order prices would be "lit" selectively or otherwise. In addition the exchange would grant fair access to the trading interest advertised by the RLI that is based on reasonable factors "principally that only retail orders are entitled to such access" that have been approved by the Commission pursuant to an approved rule change.

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<sup>30</sup> We ask that pages 2 to 14 of the Exchanges' Response Letter be incorporated by reference into this request for relief.

<sup>31</sup> Order Execution Obligations Release at 48308.

<sup>32</sup> Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632 ("Flash Order Release").

<sup>33</sup> See Dark Liquidity Proposal.

<sup>34</sup> Flash Order Release at 48633.

<sup>35</sup> Dark Liquidity Proposal at 61210.



Robert Cook, Esq.  
April 11, 2012  
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**Request for Relief**

For the reasons set forth above, the Exchanges request assurance that the staff will not recommend enforcement action pursuant to Regulation NMS Rule 602 with respect to the proposed Program's dissemination of an RLI or with respect to the RPIs advertised by the RLI. In particular, the Exchanges ask for assurance from the staff that it will not recommend such action with respect to: (1) the Exchanges with respect to collecting, processing, and making available to vendors the best bid, best offer, and quotation sizes communicated by members of the Exchanges, or (2) liquidity providers entering RPIs under the Program.

Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Janet McHinnis". The signature is written in a cursive style with a large initial 'J'.