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April 18, 2016

By Electronic Mail

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

Re:
Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS, Release No. 34-77407; File No. S7-03-16

Dear Mr. Fields,

Markit appreciates the opportunity to provide the Securities and Exchange Commission ("Commission") with comments on its Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS (the "Proposed Interpretation").[1]

Markit[2] is a leading global diversified provider of financial information services.[3] Founded in 2003, we employ over 4,000 people in 11 countries, including over 1,600 in the U.S., and our shares are listed on Nasdaq (ticker: MRKT). Markit has been actively and constructively engaged in the debate about regulatory reform in financial markets, including topics such as the implementation of G20 commitments for OTC derivatives and the design of a regulatory regime for benchmarks. Over the past years, we have submitted more than 140 comment letters to regulatory authorities around the world and have participated in numerous roundtables.

Markit's Information Services division[4] is a leading provider of compliance, analysis, and reporting of best execution and related execution quality data for broker-dealers, Alternative Trading Systems ("ATSs"), and stock exchanges. We believe our expertise in U.S. equity market structure gives us a unique perspective on potential unintended consequences of adopting a standard which terms a 1 millisecond delay as *de minimis.* This letter addresses the comments requested by the Commission on the Proposed Interpretation and answers the questions asked in the Proposed Interpretation.

[1] Release No. 34-77407 (March 18, 2016), 81 FR 15660 (March 24, 2016).
[2] See www.Markit.com for more details.
[3] We provide products and services that enhance transparency, reduce risk and improve operational efficiency of financial market activities. Our customers include banks, hedge funds, asset managers, central banks, regulators, auditors, fund administrators and insurance companies. By setting common standards and facilitating market participants' compliance with various regulatory requirements, many of our services help level the playing field between small and large firms and foster a competitive marketplace.
[4] See http://www.markit.com/Product/BestEx-Reporting for more details.

1. Comments on the Proposed Interpretation

We believe that the Proposed Interpretation, if approved, should include explicit conditions. Other commenters have noted that the Proposed Interpretation is contrary to the clear wording and intent of Rule 611[5] of Regulation NMS[6] with regard to artificial latencies[7] (which may require formal rulemaking rather than interpretive guidance to modify),[8] and raises i concerns regarding whether a delay in quotation response times of less than 1 millisecond may be *"de minimis"* (which may require further study),[9] and we believe each of these matters has merit. However, we believe that another critical matter to be considered is what activity could occur during such a delay. In particular, if the Commission decides to pursue an interpretation or formal rulemaking that would allow trading centers to artificially program delays and still deem such quotations as "protected" [10] for purposes of Rule 611, we believe the Commission should include language in such interpretation or rulemaking that explicitly precludes exchanges from utilizing the delay to re-price displayed orders previously submitted to their order book. This is because allowing an exchange to re-price orders would undermine the intent of Regulation NMS to incentivize firm orders that improve price discovery.[11] Order protection, as conceived by Regulation NMS was not based on latency alone, but also specifically designed to protect orders that are fully executable.[12]

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[5] 17 C.F.R. 242.611.

[6] Release No. 34-51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS").

[7] See Memorandum dated April 30, 2015 from the SEC Division of Trading and Markets to the SEC Market Structure Advisory Committee Regarding Rule 611 of Regulation NMS at 17 ("Rule 611 Memorandum") available at: https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf ("Rule 611 does not require exchanges or other lit venues to display protected quotations. Any exchange or other lit venue is free to adopt other trading models, such as having a 'slow' quotation that is unprotected against trade-throughs or conducting frequent batch auctions without any firm displayed quotations"). See also id. citing Regulation NMS, supra note 5, at 37519 ("If a lit venue chooses to display protected quotations, Rule 611 imposes specific requirements to assure that protected quotations are automatically and immediately accessible by anyone who wishes to access the liquidity. As noted in Section II above, the SEC has not defined 'immediate' in absolute terms, but rather has required that a trading center's systems should provide 'the fastest response possible without any programmed delay.'").

[8] See Letter to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, from John C. Nagel, Esq. Managing Director and Sr. Deputy General Counsel, Citadel LLC, dated April 14, 2016 ("Citadel Letter") at 2 - 3.

[9] See id. 3 – 5.

[10] 17 C.F.R 242.600(b)(58).

[11] See Regulation NMS, supra note 5 , at 37502 ("In sum, the Commission believes that a rule establishing price protection on an order-by-order basis for all NMS stocks is needed to protect the interests of investors, promote the display of limit orders, and thereby improve the efficiency of the NMS as a whole."). See also id. at 37505 ("By strengthening price protection in the NMS for quotations that can be accessed fairly and efficiently, Rule 611 is designed to promote market efficiency and further the interests of both investors who submit displayed limit orders and investors who submit marketable orders. .... Greater use of limit orders will increase price discovery and market depth and liquidity, thereby improving the quality of execution for the large orders of institutional investors. Moreover, strong intermarket price protection offers greater assurance, on an order-by-order basis, to investors who submit market orders that their orders in fact will be executed at the best readily available prices, which can be difficult for investors, particularly retail investors, to monitor.").

[12] See id at 37527 ("First and most importantly, Rule 611 protects only immediately accessible quotations that are available through automatic execution. It does not require investors submitting marketable orders

Exchange re-pricing logic within a delay would render such orders conditional upon the market data feeds that change during the delay. This would result in precisely the kind of "maybe" quotations Rule 611 was designed to prevent.

To explain this scenario, consider that existing exchanges have displayed pegged orders currently protected by Regulation NMS. If a contra-side order is sent to an exchange displaying a pegged order today, it will get executed before the market data feeds update a change in the NBBO. If, however, one of these exchanges implemented a time delay that delayed inbound orders from being accepted by the matching engine, the *existing* pegged order logic which continues to process market data from other exchanges without delay, would re-price the displayed order before it could be executed. This would render those displayed orders conditional, since they are only valid if there is another order at the same price. A smart order router (SOR) that attempted to "sweep" both orders simultaneously would be unable to trade against the pegged order. This type of behaviour, in our opinion, is directly counter to the Rule 611 concepts of "immediately accessible" and "automatically executable." It is important to note that this type of behaviour is only possible in an intentional delay (and not a geographic delay) since only then will the exchange matching engine continue to receive new data.[13]

2. Answers to the questions in the Proposed Interpretation

Question One:

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?

Answer: Yes. In addition to the issues noted above, all delays in exchange systems decrease the fill probability of contra-side orders. This is due to the increased chance that routers are sending orders to access a quote that has already been accessed.

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to access 'maybe' quotations that, after arrival of the order, are subject to human intervention and thereby create the potential for other market participants to determine whether to honor the quotation. Moreover, as discussed in section II.A.2 above, Rule 611 includes a variety of provisions designed to assure that marketable orders must be routed only to well-functioning trading centers displaying executable quotations.").

[13] NYSE Arca has already reacted to the risk presented by this scenario and its impact on price discovery by proposing a new discretionary pegged order type in which it would have 10 milliseconds to determine the quote stability on behalf of ETP holders. See 34-77441 (March 24, 2016), 81 FR 17749 (March 30, 2016) ("NYSE Arca Proposed Discretionary Pegged Order" ("[T]he Exchange ... would assist ETP holders in obtaining best execution for their customers by limiting executions at the midpoint of the PBBO when the PBBO is not stable, thereby providing a more conservative alternative for investors seeking to passively participate with contra-side order flow.") See also id at 17751 ("Specifically, the Discretionary Pegged Order will be an option to assist market participants to achieve best execution on behalf of their customers by reducing the potential to execute at a stale price."). We believe that such new order types, likely to be mimicked by other exchanges, increases complexity of the national market system.

Question Two:

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?

Answer: No. The issue should not be about time delay length, but rather about the nature of the delay. Intentional delays, that are applied to orders and executions transmitted to and from the exchange matching engine, are different from geographical delays. This is because intentional delays allow the matching engine to continue to process market data from other exchanges, which will facilitate re-pricing logic that could undermine the intent of Rule 611 as described above.

Question Three:

Should the Commission be concerned about market manipulation? If so, specifically, what should the Commission focus on?

Yes. Allowing time delays would increase complexity and the number of order types offered. Increased complexity relates directly to an increase in the difficulty of surveillance. While it is hard to predict precisely what forms manipulation will take, the risk that manipulative behaviour will go undetected can only increase whenever surveillance becomes more difficult.

Question Four:

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

Markit recommends that the Commission honor the original language and intent of Rule 611, which specifies that intentional delays are not allowed. As contemplated by Regulation NMS and acknowledged by the Division of Trading and Markets, trading centers are free to consider quotations with artificial latencies but those quotations would not be protected.[14] If the Commission, however, believes that intentional delays are worthwhile for displayed orders, then, in its interpretive guidance or formal rulemaking, we believe the Commission should add a stipulation that either the delay be applied to inbound market data as well as to orders, or that no re-pricing logic can occur during the delay. For the avoidance of doubt, re-pricing logic includes pegged orders, price sliding, and any other price changes to previously accepted orders facilitated by exchange systems.

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Markit thanks the Commission for the opportunity to submit these comments. If the Commission has any questions or would like additional information, please do not hesitate to contact us.

[14] See Rule 611 Memorandum, supra note 7, at 17.

Respectfully submitted,

David M. Weisberger
Managing Director, Markit
[redacted]

Cc:
The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
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