April 12h, 2016

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

Dear Mr. Fields,

Themis Trading appreciates the opportunity to comment on the [Commission's Proposed Interpretation Regarding Automated Quotation Under Regulation NMS].

I. Introduction

We are an institutional agency broker that trades in US equity markets on behalf of our clients, who are institutional firms that represent millions of regular investors. Our market structure viewpoints are based solely on our interactions and experiences trading in dozens of exchanges and dark pools in the US. We have no proprietary trading. We operate no trading venue, nor do we have any ownership stakes in any trading venue – lit or dark. Our only interest is the best trade execution possible for our buy side clients.

Currently, the Commission is looking to create a new interpretation of the term "immediate" from a Reg NMS perspective. This interpretation would allow de minimis one millisecond delays without regard for intent. It would also perhaps theoretically give the SEC a "green light" to approve IEX.

The Commission has asked the public to weigh in. We do so now, and are thankful for the opportunity. We address the first three questions to the Commission is seeking comment:

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) Should the Commission interpret "immediate" as including a de minimis delay of less than one millisecond?
3) Should the Commission be concerned about market manipulation?

We are concerned with this proposal to make de minimis certain short delays. Doing so might make it easier for the SEC to justify approval for IEX's exchange application (which would be good for long term investors), based on some newly created arbitrary yardstick. But it might very well create a precedent for the SEC to approve any "speed bump" or delay, without consideration over whether doing so would actually serve long term investors.

II. Our Argument

Not all speed bumps are created equal. Some are created with the intent to allow liquidity providers to "get out of the way" and avoid adverse selection. Some are not universally applied.

There are many such considerations. We believe that the SEC should view any proposed delay with thoughtfulness and one single measuring stick: will the proposed delay serve long term investors?

In the past, the Commission has created rules with time measurements that have become obsolete. For example, one second was a meaningful trading measure of time in 1996, but not so in 2016. We would hate to see the same mistake made again. Currently, one millisecond sounds like a reasonably acceptable short delay. But will that be the case in the near future?

Additionally, no time measurement will be reasonable as long as the SEC continues to bless mechanisms where for-profit trading venues can sell faster speed than the Commission's yardstick. This "can" has been kicked down the road for far too long. We understand if the Commission needs more time to ponder allowing payment for order flow and allowing two tiered markets. Take that time. Get principal-based regulation correct such that it can stand the test of time and be relevant under any currently conceivable market structure.

Should de minimis exemptions be created, isn't the Commission worried a millisecond might quickly become obsolete? Isn't the Commission worried that other stock exchanges will develop, at the bequest of their largest high-speed clientele, new innovative delays (under 1 millisecond) that might not have the best interests of long term investors at heart? Is the Commission trusting of the status-quo Exchanges, given their past practices and disclosure habits? Is the Commission trusting of status-quo dark pools that might create all kinds of secretive delays?

With regard to IEX's Exchange Application, we would like to point out that the Commission currently has the authority in the Exchange Act and in Reg NMS to place the interests of long term investors above those of short term traders. It has the authority to allow innovation, universally applied, to slow down the markets, and not just speed them up. It has the authority to approve IEX currently, and we believe it does not need to create a new, potentially gameable and complex yardstick to do so.

Perhaps the Commission should consider, when deciding whether a quotation is immediate and worthy of being protected, a principal for the market to adhere: *What does a trading venue know to be the true and immediate quote of a stock at the time it receives an order?*

Interpreting as "immediate" quotations that are de minimis at 1 millisecond will not solve the market structure issues we have today. Don't implement that new yardstick. Please instead deal with the underlying issue of whether allowing two-tiered markets is appropriate to begin with. Allow the free market to decide an appropriate speed of trading after it is given concrete principals of fair play based on the needs of long-term investors.

Of course, the Commission should be concerned with market manipulation. After all, the SEC has leveled significant fines levied for that the past several years. Quotes do get manipulated; in short time periods, bids and offers flicker. In short time periods, "makers" are made into "takers." In short time periods, latency arbitrage exists. For proof, talk to the good folks at Tabb Clarity, and at the University of Michigan (who estimate it at $3 billion per year), or see this disclosure on the website of Jane Street, where they discuss filling orders off-exchange against the SIP.

The Commission should specifically focus on trade-throughs, especially those that show up off-exchange in registered dark pools as well as unregistered off-exchange facilities. Such trades can be flagged for follow up by the Commission. While they are numerous in quantity to begin with, just the fact that the SEC would be examining them would diminish their rate of incidence dramatically, in our opinion.

III. The Opposing Argument

There is much hypocrisy in our modern market structure. There is concern about a 350 microsecond delay, designed to protect long term investors from getting executed at stale prices. However, as yet there is no concern over a 1-second Reg NMS look-back exemption, which allows investor orders to receive the worst pricing over trailing one second stops.

Wholesalers/HFTs have communicated to the Commission that IEX's protected quote would damage investors with stale prices. Yet the speed at which these hyper-armed co-located firms deliver fills to the investors whose orders they purchase is slower by many orders of magnitude. This strikes us as extremely unethical and misrepresentative.

Over the past decade, entrenched status-quo stock exchanges, wholesalers, and high-speed proprietary trading firms never had any issue with latency races to zero, and "edge" being sold to the highest bidder. They have all worked together to enable faster trading speeds. Speed on the way down was always deemed by them to be reasonable, even when that speed contributed to flash crashes and other confidence-bruising market structure events.

Only at this time, when one firm proposes an innovation to slow things down – a barely material 350 millionths of a second – do stock exchanges (which make their money selling speed and "edge") and wholesalers/high-speed proprietary trading firms (who pay for order flow and exchange-peddled speed and "edge") speak up about how injecting delay into a ludicrously fast market will harm investors.

We disagree – it will not harm investors. Slowing the market down over time lessens the demand for laser/microwave speed and for the ability to play the "three tick boogie." We hope the Commission can see through these transparent attempts by the above market participants to use the SEC to protect their business interests without regard for the health of the larger market structure.

IV. The SEC's Role

We believe it is important to note that the Commission has played an unintended role in fueling a very fast marketplace with a dizzying multitude of speeds at dozens of locations, often depending on how much a customer is willing to pay. For example, the SEC has:

1) Allowed colocation, and a two-tiered market with allowable latency arbitrage

2) Encouraged fragmentation.
3) Permitted private data feeds, including ones with hidden order information
4) Blessed client segmentation, so that stock exchanges and dark pools are allowed to identify types of order-owners
5) Stood pat on the distorting practice of payment for order flow, whereby the most uninformed orders, that might provide stability to the public markets, can be hoarded and roped off for high speed traders to fill against stale quotes
6) Watched idly as the industry has taken larger institutional orders and shredded them, with the clear objective of making them into digestible smaller “uninformed orders” that benefit high speed traders
7) Enabled the industry to pervert the real purpose of a dark pool -- the SEC completely backed off of its own 2009 Dark Pool proposals, which would have mitigated so much ensuing investor damage (as SEC dark pool fines are evidence of)
8) Given the stamp of approval a very, very fast trading market, with allowable clear conflicts of interests, and little policing of it; case in point: we are still years away from a weakened CAT

Despite the above, the SEC is apparently having a very hard time finding the will and means to bless a free-market solution that will slow things down and improve investor experiences. This begs the question: Does the Commission trust in a free market when it allows speeds to race to zero, but not when a free market wants to introduce something that slows speed down?

V. Impact of the Proposed Interpretation

We would like to ask a few of our own questions that deal with the practical application of a de minimis one millisecond delay.

1) Would the hypothetical delay be discriminatory?
2) Who would benefit from the delay?
3) Would the hypothetical delay be universally applied to all participants on the exchange equally and fairly?
4) What is the intent of the hypothetical delay? Is it to protect investors from getting filled at staled prices? Is it to protect market makers who don’t wish to get filled on all the size that they post?
5) What is the difference between a geographical delay, and an “intentional” one?
6) What about delays in an exchange based upon connectivity methodology – i.e. FIX vs Binary vs something else in the future?
7) What is the delay measured against - what NYSE sees, or what IEX sees, or what Citadel sees, or what MIDAS sees, or what the SIP shows?

It is easy to see that it gets very complicated, very quickly, and we have deep concerns that this rule will only make it worse.

VI. Conclusion

We appreciate that the markets are now ultra-complex, and that poses significant challenges for regulators. But massive speed differences already exist. The de minimis delay will simply maintain all of the advantages that entrenched market participants already have. The SEC does not need it to approve a speed bump-based exchange.

Perhaps the time has come for the SEC to learn from the past. The market does not need a potentially new gameable yardstick to measure and judge high-speed orders and quotes. We caution against creating new ones, including this proposed rule.

Instead, existing, ongoing issues need some principle-based regulation going forward. We suggest the following:

1) Eliminate payment for order flow
2) Eliminate the practice of segmenting clients; they should all be interacting broadly together in price-time priority with no advantages sold to any market participant; that will make order books more stable and robust
3) Correct venue disclosure issues
4) Place all trading venues, public or dark, on the same regulatory standard; judge them based on how they are meeting the needs of long-term investors, first and foremost
5) Re-examine the concept of self-regulatory organization immunity going forward; should SRO's run afoul of their real purpose – facilitating capital formation and providing even and fair playing fields for investors, allow for appropriate redress

Respectfully submitted,

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