

---

Wellington Management Company, LLP

75 State Street  
Boston  
Massachusetts 02109  
USA  
Telephone: (617) 951-5000

April 21, 2010

*Via Electronic Filing*

Elizabeth M. Murphy  
Secretary  
US Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. S7-02-10 (Comments on the Commission's Concept Release on  
Equity Market Structure)**

Dear Ms. Murphy:

Wellington Management Company, LLP ("Wellington Management") appreciates the opportunity to comment on the Commission's Concept Release on Equity Market Structure (the "Concept Release").<sup>1</sup>

### **Introduction**

Wellington Management is a privately owned, investment management firm registered under the Investment Advisers Act of 1940 (the "Advisers Act") that provides investment services to investment companies, employee benefit plans, endowments, foundations, and other institutions.<sup>2</sup> As of March 31, 2010, Wellington Management served as an investment adviser to approximately 1,700 clients and had investment management authority with respect to approximately \$560 billion in assets. Wellington Management's investment services include portfolio management styles and approaches in equities, fixed income securities, and asset allocation across all asset categories.

We support the Commission's examination of the current structure because technological, regulatory, and market practice changes cause markets to evolve, which in turn may give rise to the need to modify market regulation from time to time. We also applaud the Commission's decision to use a concept release to solicit

---

<sup>1</sup> Exchange Act Rel. No. 34-61358 (Jan. 14, 2010).

<sup>2</sup> Many of our institutional clients invest on behalf of individual participants or investors with long-term goals, which the Commission characterized as long-term investors. Concept Release at p. 33. For example, employee benefit plans and mutual funds invest on behalf of individuals saving for retirement. Characteristics of Mutual Fund Investor, 2009, at pp. 2 & 6 (Investment Company Institute Dec. 2009) (the primary goal of 94% of mutual fund households is retirement savings). Other institutions use their investments to fund long-term charitable, educational and development needs that benefit large segments of the communities they serve.

comments, which should promote more holistic consideration of the need for any changes.

## **US Equity Markets Are Among the Most Competitive and Efficient in the World**

### *Explicit and Implicit Costs have Decreased in the US Equity Markets*

A combination of technological progress and regulatory action by the Commission has led to the formation of many new, differentiated execution venues and vigorous competition for order flow among them. In our view, this competition and differentiation have benefitted both retail and institutional investors with lower execution costs and enhanced liquidity.

We cite some of our own trading statistics as evidence. From 2005 to 2009, our explicit execution costs for US equity securities have steadily declined by 6% each year on a compounded annual growth rate (CAGR) basis. For the first quarter of 2010, our implicit execution costs for US equity securities are down 52% from the peak of the financial crisis during the fourth quarter of 2008. Moreover, the implicit execution costs for the most recent trailing three quarters have been among the lowest over the past 5 years.<sup>3</sup>

### *Any Change Should Be Based on Empirical Evidence Supporting Need*

We believe that US equity markets are currently performing extremely well. Therefore, we believe that any new regulation should promote certain core principles and be based on empirical evidence demonstrating a need for change. We are concerned that any regulatory changes that are not directed at demonstrated market inefficiencies or inequities could damage or reverse the efficient performance, innovation, and development of the equity markets. We urge the Commission to carefully study proposed changes and their downstream impacts to avoid adverse unintended consequences.

## **Equity Market Regulation Should Promote Three Basic Principles**

We believe that market regulation should promote three key principles:

1. Fair regulation and competition among execution venues
2. Enhancement of liquidity and efficiency for the benefit of market users

---

<sup>3</sup> Our implicit costs for US equity transactions have generally been declining over the long-term, excluding periods of extreme market volatility and high order size. However, market volatility, order size and the investment style for which a transaction relates may all affect implicit trading costs. For example, implicit execution costs can be significantly higher during periods of extreme market volatility or when transitioning significant assets.

3. Fair access for market users

*Fair Regulation and Competition Among Execution Venues*

We believe that regulatory requirements for types of venues should differ only to the extent the differentiated requirements are specifically designed to address clearly identifiable and compelling needs. For example, we do not believe that the Commission's recent proposal to impose additional regulation solely on ATS venues as compared to other venues, including broker-dealers, satisfies this standard. Moreover, we believe that it is likely that the proposed different public reporting requirements for ATS venues could negatively impact their competitive position because large investors will quickly shift their activities to non-ATS venues. If this happens, there is a significant probability that this valuable segment of the market landscape, particularly for long-term institutional investors, will be severely impaired or cease to exist altogether.

We also believe that the burden of regulation should be shared fairly by execution venues. We are concerned that exchanges may currently be shouldering a disproportionate share of the burden of regulation, giving other types of execution venues an unfair competitive advantage. We believe that this disparity should be carefully studied and rectified (if necessary) to enhance fair competition among venues providing similar services,<sup>4</sup> and to prevent deterioration in price transparency. In addition, we believe that exchanges should be granted the ability to make certain rule changes in a manner similar to ATSs (*i.e.*, as a notification with SEC veto authority, and not as part of a lengthy notice, comment, and approval process).<sup>5</sup>

We believe that material disparities in regulatory requirements could make it difficult for exchanges to compete with ATSs and broker-dealers and could threaten their long-term survival. Not only do exchanges play a vital role in the transparency and functioning of the market, but the healthy competition that currently exists between exchanges and broker-dealers accrues to the benefit of both retail and institutional investors. If exchanges lose significant market share in the face of unfair competition, the dealer-centric model that currently exists in the fixed income markets and formerly existed among Nasdaq market makers could dominate the US equity markets. We believe that such a development would reduce transparency and competition and could adversely affect execution costs and liquidity for all investors, effectively reversing the positive developments in the equity markets over the past decade.

---

<sup>4</sup> Exchanges traditionally matched orders against their internal book or routed such orders to other exchanges with superior prices, with market makers and specialists providing liquidity in times of market imbalance. Today, many ATS and broker-dealers play a similar role, but they are not all subject to the same regulatory requirements.

<sup>5</sup> We also note that exchanges are subject to more stringent data backup requirements for business continuity purposes and other requirements that raise their operational costs.

*Enhancement of Liquidity and Efficiency For The Benefit Of Market Users*

All market regulation should be evaluated with respect to its impact on the liquidity and efficiency of equity markets for the benefit of investors. Thus, the Commission should carefully consider the potential impacts of any changes in market regulation on these critical factors. For example, certain short-term traders and high frequency traders provide liquidity to the markets. Although some of these short-term traders may differ at times in their goals and overall position vis-à-vis other types of investors, we believe, on the whole, that the liquidity they provide is beneficial to the markets. Accordingly, we encourage the Commission to fully understand the likely impact of regulating the frequency of trading activity by some market participants or other practices that could negatively impact the liquidity they provide.

The Commission has specifically asked for comment on where the interests of long-term investors and short-term investors or traders diverge, and also asked for comment on how to define a long-term investor. We support the Commission's goal of seeking to ensure that regulations encourage and promote stable, long-term investment in the equity markets. However, we do not believe that the regulation of market structure should revolve around the distinction between long-term and short-term investors because of the difficulty of clearly defining and differentiating between such investors.<sup>6</sup> We do believe that the divergence of goals or practices that negatively impact certain types of investors, including actions designed to prevent front-running of orders placed by large institutional investors representing large numbers of individuals, should be a factor weighed by the Commission in determining whether a compelling need justifies new regulation. In particular, we believe that divergence of interests among investor types is important in evaluating whether access is "fair" for market participants.

*Fair Access for Market Users*

We support a market structure that promotes fair competition based on service differentiation. Some venues compete based on their automation and speed and will budget extensively for technological improvements while other venues compete based on providing block liquidity and will budget more to support those services. We believe that practices such as co-location and future technical advancements that rely on investments in technology to implement should not be prohibited or discouraged as each venue should be able to choose how it wants to compete. However, venues should have fair access to compete for location of servers based on objective factors, such as price or timing of request. Therefore, we oppose

---

<sup>6</sup> As stated above, some of these short-term or professional traders provide beneficial liquidity to the market, and we believe that new regulation directed at those activities should be undertaken only after careful consideration that any new regulation would not harm such liquidity.

restrictions on co-location so long as the providers of such facilities do not discriminate against venues seeking access.

“Fair” access also does not mean the same access to all venues by all investors. We believe that venues should be able to establish access parameters to their venues so long as those factors are objective and do not unfairly discriminate among investors. For example, an ATS offering a service for large SEC-registered investment advisers to cross large blocks should be able to prohibit non-threshold size orders from their systems, or limit participants to registered investment advisers trading only for client accounts. These criteria differentiate the services provided by ATSs and can help investment advisers trying to complete large orders on behalf of clients to avoid short-term traders trying to trade ahead of or with their large orders. We believe that permitting venues to establish their participation criteria will ensure that they remain responsive to the competitive needs of the market.

#### **Our Views on Specific Provisions**

Based on balancing these principles, we wanted to comment on two particular proposals in the recent dark pool release.

##### *We Support Proposals to Increase Public Quotations*

The Commission recently asked for comment on the use of actionable indications of interest (“IOIs”) in dark pools and whether they harm price discovery. We support measures that will increase the price discovery process including greater publication of bid and offer quotations. However, we urge the Commission not to regulate a practice at a particular venue type (*i.e.*, IOIs in dark pools) and leave similar practices unregulated at other venues. Differential regulation can impede fair competition and is unlikely to improve price discovery because participants will likely simply move to less regulated venues. We believe price discovery would be improved if IOIs and other similar practices at other types of venues that are the functional equivalents of offers or bids are treated in an appropriately consistent manner.

*We Support Fair, Delayed Execution Venue Identification to the Public*

We support public post-trade identification by all venues per security of aggregated volume after an appropriate delay that is determined based on the liquidity of each security.<sup>7</sup> We believe that such a delay in publicly identifying transaction volumes is justified by the compelling need to protect the best execution interests of market participants, especially large institutions representing individual investors. Moreover, we believe delayed reporting by all venues would lead to standardization in the volume of trading reported and reduce double counting. We believe that delayed reporting, on the whole, would benefit the price discovery process without harming the best execution of large orders by premature disclosure. We also believe that this reporting would give managers a way to verify volume claims by venues, thereby improving the selection process and resulting competition among venues.

We specifically oppose the Commission's recent proposals that would require only dark pools to publicly report transactions in NMS stocks but not require other venues, including broker-dealers, to report transactions executed internally. We believe this proposal would provide broker-dealers with a competitive advantage with no corresponding benefit to transparency or competition.<sup>8</sup> Finally, the proposal would not improve long-term price discovery because large investors would likely shift their orders to other venues.

**Conclusion**

We urge the Commission to proceed slowly in imposing new regulatory requirements on an equity market that we believe has been operating efficiently with

---

<sup>7</sup> We generally oppose real time public identification of specific transaction executions by all venues. We believe that real time disclosure by any venue would harm investors, particularly long-term institutional investors, by making large orders visible to sophisticated professional traders. We believe that any benefit to price discovery would inure solely to the benefit of professional traders trying to identify and front-run these large orders, negatively impacting best execution for individual investors and institutions investing on behalf of individual investors.

<sup>8</sup> The Commission stated that dark pools accounted for an estimated 7.9% of the share volume in NMS stocks in September 2009 while internalized broker-dealer trades accounted for an estimated 17.5% of such share volume in the same period. Concept Release at p. 15. If such transparency is critical to market performance for dark pool trades, we fail to see why broker-dealer internalized executions should be exempted particularly given the execution data cited by the Commission.

US Securities and Exchange Commission

April 21, 2010

Page 7

reduced costs to all investors. Our firm appreciates your consideration of this letter and looks forward to working with the Commission and its staff on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Cushing", written over a horizontal line.

David C. Cushing  
Director of Global Equity Trading  
Wellington Management Company, LLP

cc: The Honorable Mary Schapiro, Chairman  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes