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April 27, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Concept Release on Equity Market Structure
Release No. 34-61358; File No. S7-02-10

GETCO

Dear Ms. Murphy:

Global Electronic Trading Company ("GETCO" or "firm") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") recent concept release on equity market structure.[1]

I. Introduction

GETCO is a leading electronic trading and technology firm providing liquidity on over 50 markets in North and South America, Europe, and Asia. We are a registered market maker on various equity and option exchanges[2] and a Designated Market Maker (DMM) and Supplemental Liquidity Provider ("SLP") on the New York Stock Exchange. From offices in Chicago, New York, London, and Singapore, the firm transacts business in cash and futures products across four asset classes – equities, fixed income, currencies and commodities. We also provide investors with access to dedicated liquidity through an Alternative Trading System ("ATS"), GETCO Execution Services, or GES. GETCO's primary trading strategy is market making—posting two sided, continuous markets—to help investors efficiently transfer the risk commonly associated with assets such as stocks, bonds, commodities and options contracts.[3] Our trading strategies employ advanced technology, real time information, transparent risk management systems and continuous innovation.

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1 Securities Exchange Act Release No. 61358 (January 14, 2010) (the "Concept Release").

2 Registered Equity Market Maker: Nasdaq, NYSE Arca, and BATS; Designated Market Maker and Supplemental Liquidity Provider: NYSE; Registered Option Market Maker: Chicago Board Options Exchange, Nasdaq Options Market, and NYSE Arca Options.

3 In GETCO's view, one of the primary purposes of a financial market is to allocate risk to those persons or entities best able to bear it. As those entities do not necessarily meet in time, place, size and counter preference, market makers and liquidity providers such as GETCO commit their own capital and assume a variety of financial risks until a natural counterparty can be found.

GETCO supports the Commission's review of equity market structure. We believe it to be essential for the Commission to periodically examine the performance of our capital markets and consider whether changes should be made, particularly after extensive regulatory and technological changes have significantly altered market practices. As the Commission undertakes its review, it is important to highlight the fact that today's market structure largely reflects the intended regulatory policy changes that the Commission has implemented over the past two decades through the order handling rules, Regulation ATS and Regulation NMS.[4] During this period, the Commission identified flaws in the national market system and rightly chose to implement regulatory changes to improve the markets. For instance, the Commission identified a proliferation of two-tiered markets in which retail orders received inferior prices to institutional orders; a lack of intermarket competition; and that investors were not benefiting from advances in routing and matching engine technology.[5] In our opinion, the Commission carefully implemented policy changes that addressed these issues and significantly improved the national market system. We urge the same careful approach to the current equity market structure analysis.

GETCO

II. Executive Summary

We believe that the current national market system is performing extremely well. For instance, the performance during the 2008 financial crisis suggests that our equity markets are resilient and robust even during times of stress and dislocation. Indeed, it is GETCO's strong view that the fundamental principles of our equity markets—efficiency, innovation, transparency, lower costs for investors, fair access, and above all else the ability of market participants to vigorously compete—have never been more prevalent than they are today.

GETCO's comments focus on the following topics raised in the Concept Release:

- ***High Frequency Trading***. GETCO believes there are many misconceptions associated with the use of the term "high frequency trading." Trading with high frequency or high speed is not a strategy at all, but a technique or style which can be used to execute a wide variety of trading strategies.

- ***The Benefits of High Frequency Trading to Retail Investors.*** All investors, and in particular retail investors, have greatly benefited from the participation of firms like GETCO in our equity markets over the past decade. High frequency trading has significantly increased trading volume, reduced spreads,

4 *See generally*, Securities Exchange Act Release No. 37619A (September 6, 1996) ("Order Handling Rules"); Securities Exchange Act Release No. 34-41297 (December 8, 1998) ("Regulation ATS"); Securities Exchange Act Release No. 51808 (June 9, 2005) ("Regulation NMS").

5 The implementation of Regulation ATS was designed to increase market center competition and allow investors to benefit from technological advances in the markets.

promoted price-discovery, and ultimately reduced transactions costs for all investors. Many market observers believe that investors have saved billions of dollars because of decreased transaction costs resulting from the intense competition to provide liquidity on our equity markets.

GETCO

- ***Co-location.*** Co-location is a positive development in our equity markets that equalizes access for participants who wish to be near the center of price discovery. Co-location is a new manifestation of a centuries old principle, as certain traders have always sought proximity to the center of trading, whether it is an exchange's trading floor or an exchange's data center. And, far from disadvantaging long-term investors, GETCO believes co-location is directly responsible for such investors receiving ultra-fast executions at better prices and lower costs than ever before.

- ***Data Feeds.*** GETCO believes delaying proprietary data feeds would serve only to ensure that large market participants have informational advantages unavailable to smaller participants, as they would have more market information by virtue of immediate access to their own trading activity.

- ***Dark Liquidity/Trade-At Requirement.*** Dark liquidity plays an important role in today's market structure. Undisplayed liquidity is an age-old practice and investors have various reasons for opting to trade on dark venues. However, there is some point at which the potential harm to price discovery on the publicly displayed markets could outweigh the benefits of off-exchange trading. Although there may not be a bright line at which the percentage of dark liquidity begins to harm the public markets, we believe we are likely approaching a tipping point. We believe that the reasoning behind implementing a trade-at requirement—to promote public market price discovery—is well intentioned. However, we believe that a better balance would be found through market-based competition. Rather than immediately implement a trade-at requirement, GETCO recommends that the Commission make other incremental rule changes such as: (1) banning flash and step up order types, (2) adjusting tick sizes for certain high and low priced securities, and (3) allowing exchanges more flexibility in setting access fees.

- ***Tick Size.*** Current minimum tick size requirements create an inefficiency in the marketplace, detrimentally affecting the public price discovery process and resulting in worse executions than would be available in the absence of this inefficiency. The current minimum tick size requirements incent internalization and hidden liquidity in certain low and very high priced stocks, which disadvantages public markets while benefiting those who trade off-exchange and undisplayed. More importantly, we believe that all orders, especially retail orders, would routinely receive better executions if the minimum tick size was correlated to the share price of the security.

- ***Historical Market Structure Initiatives and Current Rule Proposals.*** The Commission's significant past rule making, most notably, the adoption of the Order Handling Rules, Regulation ATS, and Regulation NMS was intended to increase both intra-market (price competition) and inter-market competition (market center competition). In addition to the large scale market structure changes the Commission has made over the last 15 years, over the past 18 months—since the height of the financial crisis—the Commission has been very active with rule making proposals. Nearly all of the issues that may have contributed to diminishing investor confidence have been addressed by Commission rule-making.

III. High Frequency Trading

A. High Frequency Trading Defined

GETCO

As the Commission considers the impact of different trading strategies employed by so-called high frequency traders, it is important to emphasize the Commission's own recognition that the term high frequency trading is ill-defined, referring to a broad range of strategies and activities. Thus, the Commission should avoid generalizing the concerns raised by certain questionable strategies to all electronic traders.

GETCO has invested heavily in technology and human capital to create a business that provides liquidity at historically low cost to investors. GETCO uses automated, high speed trading to provide a two-sided market in thousands of securities, which helps investors efficiently transfer risk. Market and regulatory structures play an important role in our ability to provide this service effectively. If successful, our trading strategy ensures we will trade in significant volumes as well. While high volume, high speed, automated trading are hallmarks of what is often referred to as high frequency trading, these techniques are also the primary manner in which many modern trading firms process information, react to changing market conditions and manage risk.

There are few similarities between the way high frequency trading is described by critics and GETCO's business model. For example, as a Supplemental Liquidity Provider on the NYSE in over 1,000 stocks, we are on both sides of the national best bid or offer ("NBBO") over 40% of the trading day. Furthermore, as one of five DMM's on the NYSE in over 350 symbols, a Lead Market Maker on NYSE Arca and a registered market maker on BATS and Nasdaq, we are subject to mandatory quoting and trading obligations to help facilitate a fair and orderly market. These regulatory requirements do not support the contention that all high frequency traders are only focused on capturing fleeting inefficiencies, fail to provide meaningful liquidity, or confine their trading activity to select symbols.

GETCO does not use the trading strategies referred to in the Concept Release as "momentum ignition" or "order anticipation." Nor do we route orders to markets without the intention of those orders being filled. We point out that GETCO does not use these trading strategies because, as we note above, it is important that the Commission avoid generalizing the concerns about potentially abusive forms of high speed, high volume, or high frequency trading to all active electronic traders.

B. High Frequency Trading and Retail Investors

GETCO would like to address a common misconception related to high frequency traders and the effect they have on retail investors. Some assert that high frequency traders' interests are in direct conflict with the interests of retail investors. While the storyline may be a compelling narrative, there is no reliable evidence to suggest that this conflict exists.[6] To the contrary, most retail brokers, who are subject to rigorous best execution requirements, intentionally route a majority of their customers' marketable orders to firms that engage in high frequency trading.[7]

GETCO

We believe that, over the past decade, GETCO and our competitors' participation in the equity markets have greatly benefitted retail investors. The empirical data supports our belief that the intense competition that exists on today's markets—primarily driven by firms that have embraced technology and vigorously compete for trade executions—brings tremendous benefits to all investors, particularly retail investors. These benefits include narrower spreads, deeper liquidity, increased trading volumes, better transparency, lower costs, and unprecedented access to our markets.[8] Two equity market commenters recently noted that:

> Transactions costs have declined significantly over the past 10 years, thanks to the many structural changes in equity markets, including trading in decimals instead of eighths, the proliferation of scores of trading venues that function as exchanges, and an explosion of high-frequency trading... [Estimated] total transactions costs on an average trade have fallen by more than 50%, resulting in approximately $1 billion of annual savings to its investors. When magnified across the whole investment industry, investors have probably saved tens of

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6 Some assert that "fast traders" utilize state of the art technology to disadvantage "regular" investors. One such scenario is as follows: a retail customer order is routed to an OTC market maker/wholesaler for execution. The OTC market maker may immediately execute the retail order against its own account at a price that is equal to or better than the current NBBO. When the trade "hits the tape," the allegation is that high frequency traders often "see" the print and then cancels resting limit orders, thus creating higher "layoff" costs for the OTC market maker. However, a high frequency OTC market maker could execute an order to lay-off their risk before the internalized order "hits the tape" and is made public. The retail customer benefits with an immediate execution at a price equal to or better than the current NBBO because of vigorous price competition on the public market. We do not believe that an OTC market maker is disadvantaged in this scenario when it freely chooses to execute against a retail customer's order.

7 *See generally*, retail brokers-dealers' Rule 606 reports.

8 *See* Angel, Harris, and Spatt, *Equity Trading in the 21st Century* (February 23, 2010).

> billions of dollars in transactions costs...Far from destabilizing or creating volatility in the market, [high frequency trader's] actions significantly increase trading volume, reduce spreads, promote price-discovery, and ultimately reduce transactions costs for long-term investors. Such trades might not be doing God's work, but they are socially useful.[9]

We concede that intense price competition to create better prices in the public markets might harm the business models of OTC market makers. However, we are confident that an objective evaluation of the available evidence concerning the role played by high frequency traders in our markets today will demonstrate that GETCO and our competitors create a direct and meaningful benefit to retail and institutional, long-term investors.[10] We discuss these tangible benefits in more detail below.

C. Investors Benefit from the Liquidity Provided by High Frequency Traders During Periods of Volatility and Dislocation

GETCO

As a market maker, GETCO takes on risk by committing capital during periods in which natural counterparties to transactions are not present. Our market making activities support the market during periods of relatively level trading activity as well as during periods of more volatile trading. In fact, during more volatile periods the firm generally commits more capital and provides more liquidity, thus giving the market support and stability when it is most needed.

Perhaps the best example of this activity is the 2008 financial crisis. As GETCO has noted in several of our comment letters, during the financial crisis, opaque and complex OTC derivatives caused a panic in credit markets world-wide, but equity and futures markets opened each day with firm prices and ample liquidity. In previous instances of market stress, communication broke down and markets stopped functioning, and it was difficult, if not impossible, to trade. For instance, during the 1987 stock market crash the U.S. General Accounting Office found the following:

> The massive volume of trading activity strained some automated systems to meet the needs of traders. System backlogs caused intended trades to be delayed or unexecuted and contributed to an overall inability to conduct normal trading activities. This added to the confusion and panic in the markets. Investor complaints during this period most often related to poor or non-execution of orders or to problems with margin calls. The unprecedented volumes, coupled with large order imbalances and rapid price movements, strained the market-making capacity, particularly at the New York Stock Exchange and in the primary over-the counter market. Their inability to maintain

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9 Burton G. Malkiel, and George U Sauter, *A Transaction Tax would Hurt All Investors, Wall Street Journal,* December 8, 2009.

10 *See* Jones and Sirri, *Examining the Main Street Benefits of our Modern Financial Markets*, U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (2010).

> orderly markets and, at times, to make any market at all in large numbers of stocks, was a major source of uncertainty for traders.[11]

By contrast, in the 2008 crisis, the direction and volatility of asset prices was indeed unsettling but the markets themselves held up remarkably well. GETCO did not experience any material outages on any of the exchanges where we make markets and, in fact, our participation rates during the fall of 2008 were the largest in the firm's history. GETCO was also able to make markets without the frictions associated with short sale restrictions because the Commission and the Exchanges recognized that not all market participants are the same and subsequently provided an exception for bona fide market makers. As the Commission stated in its Emergency Order:

> We are providing a limited exception for certain bona fide market makers. We believe this narrow exception is necessary because such market makers may need to facilitate customer orders in a fast moving market without possible delays associated with complying with the requirements of this Order. [12]

GETCO

While some market commenters may attempt to paint the above exception as an example of special advantages granted to certain market participants, the evidence shows that the exception was an important element in maintaining orderly liquid markets. Analysis of trading patterns during this time-period indicates that spreads were fairly consistent regardless of the directional move in the market. If, as some critics contend, high frequency market makers had "left the market" during this period of uncertainty and volatility then spreads would have widened, potentially in a material way.

D. Small Capitalization Stocks Benefit from GETCO's Liquidity

A criticism often leveled at high frequency trading is that market making firms such as GETCO do not provide liquidity in small capitalization stocks. Again, the term "high frequency" is too broadly used in this context and does not take into account the variety of trading participants or the diversity of their individual strategies.

GETCO provides liquidity in over 3000 stocks, many of which are relatively inactive. As a DMM on NYSE, GETCO is obligated to quote in over 350 symbols and of those, 151 have average daily volume of less than a 100,000 shares per day.

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11 U.S. General Accounting Office, *Preliminary Observations on the October 1987 Crash*, GAO-88-38 (January 1988).

12 Securities Exchange Act Release No. 34-58592 (September 18, 2008).

E. Liquidity Rebates and Payment for Order Flow

The Commission has requested comment on trading that is "geared toward earning liquidity rebates and on the benefits or drawbacks of such trading."[13] It is important to highlight that GETCO does not employ unique trading strategies that are solely designed to earn a rebate. We make markets on exchanges that employ a rebate structure and we make markets on exchanges that do not. The rebate and all other fees (e.g., clearing fees, exchange fees, Section 31 fees, etc) are incorporated into our quoted prices. Simply put, rebates are just another cost or benefit that we use in determining the "fair value" of a security that we want to make a market around. Not surprisingly, on markets in which we earn a rebate, we are able to post much tighter markets. As such, investors that execute against our orders and investors whose internalized orders are price-matched off of our bids and offers benefit.

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If, however, the Commission were to consider additional regulations regarding liquidity rebates,[14] it is imperative that any regulatory initiative contemplates all forms of remuneration for providing or accessing liquidity. As the Commission is well aware, there are a variety of order routing and liquidity providing arrangements that are prevalent in our markets today. For example, most retail customer marketable orders are not routed to the public markets because public markets do not pay for order flow and instead use a "maker-taker" pricing model. Orders sent to OTC market makers, most of which engage in high frequency trading in some form or another, are internalized and not subject to the same level of price competition as on the public markets.[15]

GETCO has argued previously that, in the options markets context, maker-taker pricing is a more transparent model than a payment for order flow model.[16] In both the equity and options markets in which firms are required to obtain best execution for their customers' orders, rebates associated with a maker-taker pricing model provide other tangible benefits, which include: (1) discouraging off-exchange internalization thereby protecting price discovery process on the public markets, (2)

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13 Securities Exchange Act Release No. 34-61358 (January 14, 2010) at 51.

14 The amounts market centers can rebate to liquidity providers is effectively limited because of the access fee caps imposed by Reg NMS.

15 While GETCO is very active in posting liquidity in the public markets, we also engage in the practice of internalization by accepting directed orders from broker dealers (including some retail broker dealers) through our alternative trading system GETCO Execution Services. It has been our experience that the reason that trading costs are far lower today than they were a decade ago, is from the intense competition on the public markets, often provided by the myriad of electronic or "high frequency" trading firms that exist today. This is an enormous benefit to retail investors.

16 *See* Letter to Florence E. Harmon, Acting Secretary Securities and Exchange Commission regarding NYSE Arca's Proposed Rule Change to Amend its Schedule of Fees and Charges, (SR-NYSE Arca 2008-75), dated September 8, 2008.

pressuring opaque payment for order flow arrangements and (3) encouraging liquidity providers to tighten spreads by placing orders on public markets so that public market price discovery remains robust.

IV. Co-location and Data Feeds

The Concept Release asks several questions about some of the tools that today's most advanced traders use, including co-location services and proprietary trading center data feeds. These tools represent market responses to the advances in communications and broadband technology.

A. Co-location

The Concept Release broadly requests comment on co-location and whether it is beneficial or harmful for investors and market quality. Criticisms of co-location are similar to criticisms of high frequency trading generally in that sophisticated market professionals with sophisticated co-located computers unfairly trade ahead of unsuspecting retail orders. Co-location does not in any way undermine market integrity, nor is it "unfair." Co-location is simply the equivalent of the modern day trading floor.

GETCO

Historically, professional market participants, market makers in particular, have wanted to be as close as possible to the center of price discovery. For decades, this entailed buying an exchange membership or seat, putting on a colored jacket, pinning your firm's badge to your lapel, and going down to the exchange's trading pits. Trading pits have been replaced with computer "matching engines" and, just as being in the exchange's trading pits was critical for an open-outcry market maker, today's market makers must be as close to the exchange's computer matching engine as possible.

Another argument against co-location is that it grants a speed advantage to certain market participants, but it is important to note that co-location alone is not the sole determinative factor in whether or not a market participant is successful. No doubt, speed, certainty of execution and proximity have always been important factors that enable a market maker to manage the risk associated with making markets. Moreover, if market participants can process information quickly then inefficiencies and discrepancies in the pricing of securities are reduced. While critics will always complain that our markets are too complicated and unreasonably reliant on state of the art technology, all of the evidence suggests that the technological innovations and speed with which our market operates has been an enormously positive development for investors.

Another important aspect of co-location is that anyone can invest in it if they determine speed is a necessary component to their ultimate trading strategy. In fact, many investors outsource their trades to brokers who are co-located. The SEC has mandated that the exchanges must provide equal access to all market participants.

And exchanges grant co-location to anyone willing to pay for it, just as exchanges used to grant trading floor access to those willing to buy a badge or a seat. Most brokers, including institutional and retail, are either co-located themselves or access the market through a member firm that is co-located. Given the relatively easy access to co-location historically, it is also worth noting that many trading participants have determined that these services are not necessary for the successful operation of their business. This in itself is ample evidence that co-location, while useful for a small subset of market participants, is not necessary for all trading firms.

B. Latency Disclosure

We do not believe that there is a particularly urgent need for the Commission to require latency disclosure, as a significant amount of latency information is already publicly available. Market forces demand that providers of co-location be transparent as they compete based on latency. These providers have a strong incentive to provide latency information to support the value they offer as a co-location provider. Moreover, market participants are easily able to track the latency of an order by reviewing the time period between order entry and receipt of an acknowledgment message or the time at which the order was filled.

GETCO

C. Data Feeds

As the Concept Release notes, because of the extra step required for self-regulatory organizations to send data to market data plan processors and for the data to be consolidated and redistributed, the information in the consolidated data feed generally reaches subscribers later than information from the individual data feeds of exchanges and ECNs. The Concept Release asks whether trading center data should be delayed for a period of time so that it does not reach subscribers prior to the consolidated feed.

GETCO believes that the Commission should not require proprietary trading center data feeds to be delayed. Delaying the feeds for individual exchanges and ECNs would actually result in more asymmetry in trading than exists today. If the data feeds were delayed, large market participants would likely have an advantage because they would have quicker access to significant amounts market information before the consolidated data feed or the delayed data feed reached other users. In addition, any firm can choose to invest in a proprietary data feed or the technology to process data feeds offered by market centers (in fact, some markets such as the BATS[17] provide such feeds at no charge). As long as the Commission is aware of the contents and the fees associated with data feeds and that access is fairly obtainable, we believe that data feeds enhance market quality.

[17] GETCO has an ownership interest in BATS.

V. The Role of Dark Liquidity

A. Undisplayed Liquidity

Although the increased use of electronic trading platforms such as ATSs has recently raised the profile of trading that occurs off public exchanges ("dark liquidity"), trading in an undisplayed fashion—both on and off of the public markets—is not a new market phenomenon. Dark liquidity has long been present in the equity markets in the form of pocketed orders on the floor and block orders held upstairs, as well as over the counter market makers paying retail broker-dealers to send them their customer's marketable orders.

From a pure policy perspective, the Commission will always need to wrestle with seemingly conflicting market structure elements associated with "displayed" versus "dark" markets. Stated another way, the Commission is required to balance the need to protect the public price discovery process by adopting rules that encourage and reward market participants that risk capital by openly holding themselves out (displaying liquidity) as a willing buyer or seller, with the tangible benefits (such as order type innovation, and price flexibility) provided by those that operate in the less transparent dark markets. Just as dark liquidity is not new, this conflict is also not a new phenomenon and over the years the Commission has been very effective at finding the right balance, evidenced by the fact that over the last two decades the amount of liquidity that has executed solely in dark venues has stayed relatively constant at 20-30%.[18]

GETCO

Clarifying a broker-dealer's best execution responsibilities could shift some customer order flow back to public markets without jeopardizing the benefits provided by dark venues. For example, the Commission could prescribe circumstances under which payment for order flow or rebates are inconsistent with a broker-dealer's duty of best execution. The Commission also could interpret best execution responsibilities for customer limit orders, including when the duty of best execution requires limit orders to be routed to trading venues with greater depth.

B. Tick Size

The Commission seeks comment regarding the effects of "tick size" on publicly quoted markets and whether the larger percentage spread in low-priced stocks leads to greater internalization. OTC market makers that internalize order flow can make more trading profits when the bid-ask spread is wider. As such, a market maker's profit from trading against customer orders in Citigroup—a 5 dollar stock with a 1 cent or 20 basis point spread—are significantly higher than the profits made from

18 In the Concept Release, the Commission noted "that the overall percentage of trading volume between undisplayed trading centers and displayed trading centers has remained fairly steady for many years between 70% and 80%." Securities Exchange Act Release No. 34-61358 (January 14, 2010), at 69-70.

trading Microsoft—a 30 dollar stock with a 1 cent or 3 basis point spread. As a result, internalizers are able to pay more for retail customer order flow in Citigroup than in Microsoft. This dynamic results in increased internalization rates for low priced, high volume securities. In Citigroup, public market liquidity providers would execute orders at better prices (tighter bid-ask spread) but the one cent tick size prevents competition. Although the price floor encourages additional liquidity and deeper markets, the quoted depth in Citigroup, for example, well exceeds the typical order size demanded. GETCO believes that if the minimum tick size in stocks such as Citigroup was reduced, more executions would occur on the public markets and retail customers would routinely receive better prices.

Similarly, too fine of a tick size can also be detrimental. For example, Google is a $500 security in which the minimum tick is 0.2 basis points, equivalent to a 0.0005 minimum tick for a $25.00 stock. As a result, market participants routinely step ahead of displayed limit orders with hidden orders, buying execution priority cheaply, thereby making the publicly displayed limit orders less likely to be executed. Therefore, market making firms are less aggressive in posting limit orders to narrow the bid-ask spread. Hidden trading volume, i.e. trades within the spread, even on public venues such as Nasdaq, BATS and NYSE Arca, can be as high as 40% of all trading. GETCO believes that retail customers often receive inferior executions in high priced securities like Google because internalizers match the best displayed price even though it is likely that retail orders could obtain better prices if they were routed to the public markets where significant hidden liquidity exists at better prices.

GETCO

The results of trading in FAS and FAZ before and after the stocks reverse split is instructive. In July of 2009, FAS and FAZ executed reverse 1:5 and 1:10 splits, effectively reducing the minimum tick size in percentage terms. The tick sizes were reduced from 13 basis points to 2.6 basis points in FAS, and 18 basis points to 1.8 basis points in FAZ.

In our analysis of FAS and FAZ, investors clearly benefit from a decrease in the effective minimum tick. Using Nasdaq trades from the period, the data shows that 99% of all trade sizes were satisfied by the displayed liquidity post split at a tighter spread. We find that the average spread to execute the 99th percentile trade drops from 14.7 basis points to 6.9 basis points in FAS post split. In FAZ, it drops from 19.6 basis points to 5.2 basis points.[19]

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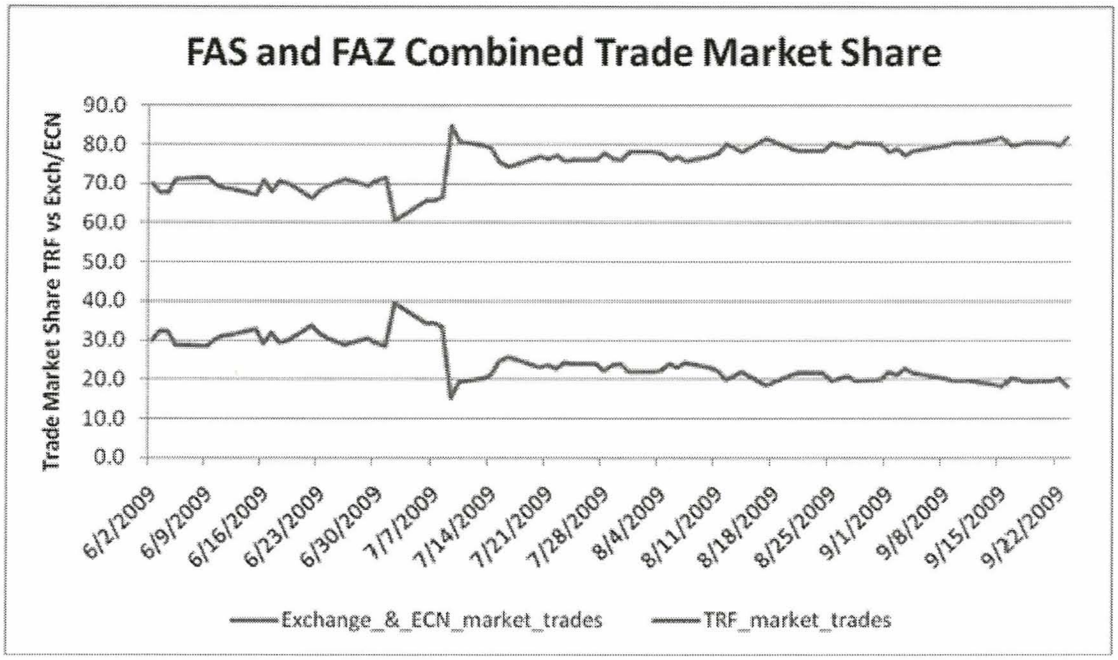
19 Our analysis was performed by reconstructing all trades from 9:31 to 15:59, where multiple executions could be part of the same "trade", meaning a single liquidity demander has traded with multiple liquidity providers. We excluded the first and last minute to avoid open/closing cross trade reports. We determined the 99th percentile of trades pre-split, which for FAS and FAZ we calculate as ~$184k and ~$142k in notional terms. Once per second, we computed the average price to buy and sell that notional amount, taking the difference as the spread. We averaged the 3 days pre-split and 3 days post-split. Our analysis utilized Nasdaq data only. We analyzed the trading days from July 6 2009 to July 13, 2009.

Moreover, the data also shows that off-exchange trading, or internalization, of FAS and FAZ decreased post-split, consistent with the earlier idea that the constraint on competition for liquidity provision in Citigroup imposed by the 1 cent minimum tick is encouraging off-exchange trading.



We believe that the Commission should consider a pilot program in which exchanges select a small subset of securities for tick modification (both increase and decrease), so that pre- and post market quality can be examined. With such a pilot the Commission should generalize the access fee cap to one-third of the spread to prevent manipulative pricing.

C. Trade-At Requirement

GETCO believes that despite the significant benefits associated with dark liquidity, there is some point at which the harm to public price discovery could outweigh the benefits. Although there may not be a bright line at which the percentage of executions on dark venues begins to harm the markets, we believe we are likely approaching a tipping point. Thus the Commission should carefully consider whether any steps need to be taken to ensure that public price discovery remains robust.

The Concept Release asks whether a trade-at rule would be helpful in encouraging order flow to move from dark venues to public markets. Under such a rule, a trading center that was not publicly quoting at the NBBO would be required to either execute the order with significant price improvement (such as the minimum allowable quoting increment) or route ISOs to the full displayed size of NBBO quotations and execute the balance of the order at the NBBO price. The net effect of such an initiative would likely be to encourage more orders to be displayed in the public markets, thereby enhancing the public price discovery process.

The Commission is right to recognize the potentially distortive effects of valuable order flow being executed away from displayed public markets. We believe that the reasoning behind implementing a trade-at requirement—to promote public market price discovery, is well intentioned. To accomplish such a result, however, we would favor a market based approach. Our current market structure allows market centers to use a portion of their access fee to compensate liquidity providers for the added risk they take by publicly displaying their orders and not being able to pre-select their counterparty. Market centers compete to find the lowest compensation possible, and a trade-at rule would be economically similar to setting all access fees and rebates at one-tick. We believe that a better balance would be found through competition, and therefore feel that incremental steps could better achieve this result.

GETCO

The Commission could promote competition that would likely result in maximizing the proper balance between dark and displayed markets, and encourage price discovery on the public markets by: (1) banning flash/step-ups and any substantially similar order types that devalue publically displayed, firm quotes; (2) regularly reviewing and adjusting tick sizes (as discussed above); and (3) allowing for more flexibility for exchanges to set access fees. In particular, a higher fee cap could allow exchanges to better compete with dark venues while competition between displayed, public markets would likely keep the fee as low as possible.

VI. Historical Market Structure Initiatives and Current Rule Proposals

While GETCO agrees that we should continuously look for ways to improve our market structure, today's markets are fundamentally sound.

A. <u>Market Structure Initiatives Have Fostered Improvements in Equity Markets Resulting in Unprecedented Benefits to Institutional and Retail Investors</u>

The Commission's significant past rule making, most notably, the adoption of the Order Handling Rules, Regulation ATS, and Regulation NMS was intended to increase both intra-market (price competition) and inter-market competition (market center competition). The current level of competition in the US equity markets, both between market centers and trading participants providing price improvement to investors is at an all-time high. With ten U.S. equity exchanges, eight options exchanges and a myriad of OTC trading facilities, combined with transformational technology over the past decade, investors today enjoy unprecedented capabilities to access and interact with liquidity across market centers--at historically low costs and with relatively few and reasonable barriers to entry.

Additionally, the Commission intended to promote efficiency and innovation in our markets. It goes without saying, but the US equity markets are also the most innovative in the world. As we noted in our Dark Pool Comment letter, several market structure initiatives that are prevalent on the public exchanges today (maker-taker pricing, true price/time match, immediately accessible firm quotes, auto-execution, and decimalization) were all created in some form on ATSs. These innovations have helped drive efficiency and lower costs for investors.

B. Commission's Recent Policy Initiatives Have Addressed Significant Regulatory Concerns

In addition to the large scale market structure changes the Commission has made over the last 15 years, over the past 18 months—since the height of the financial crisis—the Commission has been very active with rule making proposals. Nearly all of the issues that may have contributed to diminishing investor confidence have been addressed by Commission rule-making. These initiatives include:

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- Short Selling Restrictions—The Commission has adopted rules that have significantly diminished the number of "fails to deliver" from so-called "naked" short selling. GETCO fully supported the Commission's actions on fails to deliver, as extended fails to deliver create inefficiencies by effectively creating new shares of a security. The Commission also recently adopted a new price test restriction that will limit short seller's ability to short a stock when there is a severe price decline. GETCO opposed the re-implementation of any short-sale price test. It is our view that short selling is often unfairly maligned as "manipulative," even though it is a lawful and important component of efficient markets. Legitimate short selling activity provides a reliable source of market liquidity, and price discovery. That being said, while GETCO believes that a price test was not warranted, there is evidence to suggest that implementing the price test has helped to restore investor confidence.

- Flash/Step-Up Orders—The Commission has proposed banning so called "flash" or "step-up" orders in both the equities and options markets. These order types effectively permit an Exchange member to lock the NBBO by displaying a marketable order on internal exchange data feeds to other Exchange members for a period of time before the order is routed to an away market or cancelled; thereby allowing Exchange members to "step-up" and execute the order. GETCO has been an early and vocal critic of these order types. As we noted in our previous comment letters, we believe that step-up orders raise numerous and important market structure issues for the public equity markets regarding best execution, transparency, competition and the overall value that should be placed on the public display of limit orders. These order types also raise questions regarding compliance with Regulation NMS and Regulation ATS. As we noted above, GETCO renews its call that the Commission ban flash/step-up orders in both the equities and options markets. Given that these order types are not well understood by many in the industry and the investing public, eliminating them will go a long way in helping to restore investor confidence in our current market structure.

- Dark Pools—Dark Pools have also become another controversial topic. GETCO supports the Commission's Dark Pool Proposal. It is clear that the investing public needs a better understanding of what dark pools are and how they fit into the current market structure. We believe that the Commission's proposal--(1) treating actionable indications of interests as quotes, (2) lowering the threshold for requiring display into the public quote stream of IOI's and other quotes, and (3) increasing dark pool reporting requirements--is a balanced and useful rule proposal that will provide more clarity around the operation of dark pools.

- Market Access—GETCO also supports the Commission's rule proposal that effectively bans "naked sponsored access." As we noted in our comment letter, the goal of reducing systemic risk in the market place is an important one and we believe that implementing uniform, system-wide risk control and monitoring requirements are an appropriate mechanism for furthering that goal.

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It is GETCO's firm belief that the above regulatory proposals will improve upon our current market structure, thereby alleviating the need to implement additional, more draconian measures. GETCO reiterates a point we made in our recent Market Access comment letter:

> Indeed, it has been our experience that even though the U.S. cash equity market structure has dramatically changed over the last decade, the current regulatory regime has matured and adapted to foster growth, promote transparency, product innovation, and competition.[20]

We hope the Commission bears these principles in mind when it considers any additional rule-making or significant market structure changes.

VII. Conclusion

We support the Commission's efforts to evaluate equity market structure. The Commission asks important questions regarding the equity markets. After completing this review, the Commission needs to exercise great care in addressing the core issues raised by the Concept Release. If it chooses to move forward with significant changes, it should pilot its proposals with a limited group of stocks for a fixed period of time to assess the real world impact of its proposals.

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[20] *See* Letter to Elizabeth Murphy, Secretary, Securities and Exchange Commission regarding Securities Exchange Act Release No. 61379 (File No. S7-03-10), dated April 1, 2010.

GETCO appreciates the opportunity to submit these comments. Please do not hesitate to contact me at 312-931-2200 if you have any questions.

Sincerely,

John A. McCarthy
General Counsel

GETCO