MEMORANDUM

To: File No. S7-05-18

From: Jill S. Henderson  
Counsel to Commissioner Kara Stein  
U.S. Securities and Exchange Commission

Date: May 22, 2018

Re: Meeting with Representatives from Morgan Stanley

On May 1, 2018, Commissioner Stein, Jill Henderson (Counsel to Commissioner Stein), and Sirimal Mukerjee (Counsel to Commissioner Stein) met with Sapna Patel, Andrew Silverman, Joyce Tavoulareas, and Bill Neuberger of Morgan Stanley. Topics discussed included access fees.

Attachment: Morgan Stanley Presentation
**Regulation NMS Evolution**

**TRADE THROUGH / ORDER PROTECTION RULE**
*Current Requirement:* Cannot trade through better priced, top of book displayed quotes on exchanges absent an exception

**Short-Term Considerations**
- Keep in place, but allow the two carve outs below to address concerns
- **Volume Threshold** – impose a 2% volume threshold for exchanges (e.g., 6 consecutive months to get in or out)
- **Block Exception** – 50K shares or $1M notional

**Long-Term Considerations**
- Regulatory analysis re: whether the rule still serves its intended goals, including protecting retail investors
- If replaced with a Best Execution regime, then need to carefully address concerns

**ACCESS FEES**
*Current Requirement:* Access fees capped at 30 mils per share for top of book protected quotes

**Short-Term Considerations**
- Need rationale and data, whether structured as a pilot or rule change, to support final outcome – what is the definition of success?
- Reduce fee cap across all stocks with gradual cuts every 6 months to collect data (e.g., 30 mils to 20 mils to 10 mils, etc.)
- Rebate ban does not eliminate perceived order routing conflicts

**Long-Term Considerations**
- Access fees, stock price and tick size are all tied; consider dynamic stock specific ticks with access fees capped at 10% of the tick size (e.g., 10 mils if penny tick; 50 mils if nickel tick)

**MARKET DATA**
*Current State:* Exchanges sell faster market data at premium pricing; not all market participants are able to pay for it

**Short-Term Considerations**
- Determine whether current state is acceptable or represents a fundamental fairness issue that needs to be addressed
- SEC should mandate that exchanges provide justification for market data fee increases

**Long-Term Considerations**
- Allow for competing market data consolidators, or
- Eliminate the SIP / public tape and mandate use of direct feeds from exchanges at a reasonable cost

**MORGAN STANLEY PERSPECTIVE**
- US equities markets generally function well – but regulation needs to keep pace with technological and trading evolution
- No revisions 10+ years led to aggressive order handling practices and regulation by enforcement
- Review of Reg NMS as a whole is therefore warranted – major issues are intertwined

**EXCHANGE STRUCTURE EVOLUTION**
*Current State:* Potential for conflict when for-profit exchanges regulate member firms / competitors, limit their liability, charge monopoly pricing and draft NMS plans

**Short-Term Considerations**
- Exchanges should not have immunity / limited liability for their commercial functions and decisions
- Exchange monopoly costs (e.g., market data, connectivity, auction fees) need to be kept in check by the SEC
- SEC should not delegate rulemaking to exchanges

**Long-Term Considerations**
- Exchanges should not have regulatory oversight over their competitors (i.e., cannot be a referee and a player); revisit entire SRO structure
History of Morgan Stanley’s Views on Order Handling Practices

*For many years, Morgan Stanley has publicly advocated for more detailed disclosures to clients regarding the manner in which brokers handle their orders, including with respect to any dark pools that they may operate.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>2008</td>
<td>Series of presentations to inform clients, the SEC and other regulators globally of various dark pool and aggressive broker order handling practices (“Shades of Gray”)</td>
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<td>2008</td>
<td>Questions for Clients to Ask of Their Dark Pool Providers</td>
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<td>2009</td>
<td>Comment Letter on NASDAQ / BATS Flash Orders</td>
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<td>2010</td>
<td>Comment Letter on SEC’s Dark Pool / IOI Proposal</td>
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<tr>
<td>2010</td>
<td>Questions for Clients to Ask Brokers re Order Handling Practices</td>
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<td>2010</td>
<td>SEC Market Structure Roundtable – Dark Liquidity Panel Statement</td>
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<td>2011</td>
<td>Presentation to the SEC on Order Handling Practices and Disclosures</td>
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<tr>
<td>2013</td>
<td>Presentation to the SEC on an Update on Equity Market Structure</td>
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<td>2014</td>
<td>Note to Clients – Morgan Stanley’s Views on Equity Market Structure</td>
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<td>2015</td>
<td>Presentation to the SEC on Order Handling Transparency</td>
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<td>2015</td>
<td>SEC EMSAC Meeting – Regulatory Structure of Trading Venues Panel</td>
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<td>2016</td>
<td>Comment Letter on ATS-N / Dark Pool Transparency Proposal</td>
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<td>2018</td>
<td>Video Call with SEC Staff on ATS-N and Order Handling Transparency</td>
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