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October 7, 2016

VIA EMAIL

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

Re: File No. S7-14-16: Securities and Exchange Commission; Disclosure of Order Handling Information

Dear Mr. Fields:

BIDS Trading L.P. ("BIDS") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or the "Commission") proposed rule related to Disclosure of Order Handling Information,¹ which would amend requirements under Regulation NMS ("Regulation NMS") under the Securities Exchange Act of 1934, among other regulations ("Proposing Release"). BIDS generally supports the Commission's goal of enhancing the transparency related to order handling and routing information. BIDS submits this comment letter to encourage the Commission to narrow its proposed definition of "actionable indications of interest" or "actionable IOIs" in a manner that would distinguish the messages sent to negotiable platforms, such as BIDS, in the form of "conditional orders" from the scope of the proposed definition of "actionable indications of interest" presented in the Proposing Release.

1. BIDS Trading

BIDS is a registered broker-dealer and the owner and operator of the BIDS ATS, an open, flexible platform designed to attract liquidity through its model. BIDS's sole business is operating the BIDS ATS. BIDS does not engage in proprietary trading and BIDS does not have any trading affiliates.

¹ Disclosure of Order Handling Information, Exchange Act Release No. 34-78309, 81 Fed. Reg. 49,432 (July 27, 2016) ("Proposing Release").

The BIDS ATS permits participants to submit anonymous “conditional orders,”² which allows the BIDS matching system to seek a potential contra-side order confidentially. To the extent that a counterparty is identified, the BIDS ATS then informs each counterparty of the potential for a trade by issuing an invitation. If a participant accepts (or “firms up”) the invitation, then the participant must replace the conditional order with a firm order. An execution occurs on the BIDS ATS where both sides firm-up in response to the invitation.³ BIDS notes that this interaction is on a one-to-one basis and that a potential counterparty will only receive an invitation if it has in fact submitted a conditional order (i.e., the counterparty is in the BIDS system and not external). This process of anonymously and confidentially matching conditional orders is designed to assist in preventing leakage of information related to a participant’s trading interests.

2. General Comment

BIDS supports the Commission’s efforts to provide greater transparency regarding the disclosure of additional order handling information. In particular, BIDS believes that providing investors with certain information related to the use of indications of interest (or other similar, yet distinct, messages) by a broker-dealer, or other market participants, in connection with their orders can provide investors with useful information. BIDS also agrees that investors could benefit from information related to “actionable IOIs”; however, BIDS asks that the Commission narrow and clarify the proposed definition of “actionable IOIs” in the Proposing Release to distinguish, among other types of indications of interest or similar messages, “conditional orders” in order to avoid confusion as to this term as used in this proposed rule and other rule contexts.

3. Proposed Definition of Actionable IOI

In the Proposing Release, the Commission proposed that covered brokers capture and publish certain information with regard to “actionable indications of interest” or “actionable IOIs.” Under proposed Rule 600(b)(1), “actionable IOIs” would be defined as:

any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and (4) a size that is at least equal to one round lot.

The Commission continues by stating that:

the proposed definition of actionable IOI would require a broker-dealer to disclose its activity that communicates to external liquidity providers to send an order to the broker-dealer in response to a customer’s institutional order.

² By contrast, to the extent that the BIDS ATS receives a firm order, it would be immediately executable against another firm order or a participant that has firm-ed-up its own conditional order.

³ An execution may not occur if a counterparty cancels, or otherwise changes its order during the firm-up phase of the interaction, or if there is a change in the NBBO that no longer satisfies the terms of either “firmed up” order.

This proposed definition appears to represent situations where indications of interest (“IOIs”) are routed out by a broker-dealer at the time that it has actual and tradeable orders underlying the IOIs. As the Commission discusses in the Proposing Release, the underlying purpose of this type of IOI is to attract live orders to match with resting orders at the market center that sent out the IOIs, making them “actionable IOIs.” BIDS believes that the conditional orders on its venue are different from the actionable IOIs described in the Proposing Release because they are not an “order available at the venue.” Nevertheless, for the reasons set forth below, BIDS further believes that the Commission should acknowledge this distinction and urges the Commission to further refine its definitions to exclude conditional orders from “actionable IOIs” in order to harmonize the regulatory definitions associated with such orders and to avoid inclusion of IOIs that are not, in fact, actionable.

4. Discussion

BIDS requests that the Commission distinguish “conditional orders” from the definition of “actionable IOIs” included in the Proposing Release. As written, the Commission’s proposed definition of the term “actionable IOI” appears to be an umbrella definition that could be read to subsume conditional orders, as well as any other unique message that may qualify under the broad definition. As discussed above, BIDS accepts conditional orders into its matching system to permit a participant to seek out a potential counter party anonymously and then to take additional steps before firming up an order.

Unlike actionable IOIs, conditional orders require an additional step before the party submitting a conditional order will receive an execution. BIDS refers to this process as “firming-up” the conditional order to convert it to a firm order. Significantly, the process of submitting a conditional order to a platform and then determining whether to participate in an execution if a counterparty is located is distinct from the use of actionable IOIs described by the Commission in the Proposing Release. Thus, a conditional order should not be regarded as “available at the venue.” Similarly, conditional orders are not “externally communicated” to liquidity providers in search of a counterparty willing to submit a firm order to the market center. In fact, they are used in a manner quite distinct from the broadcast of actionable IOIs. Conditional orders are submitted by participants in an anonymous, dark matching platform to confidentially seek a potential counterparty involving a one-to-one interaction, not one-to-many as is typically the case with actionable IOIs. Conditional orders are used in these venues specifically to avoid any broader outside disclosure of potential trading interests.

The Commission recognized the distinctiveness of conditional orders in its current proposed rulemaking under Regulation ATS.⁴ In the ATS-N Proposing Release, the Commission stated that:

Conditional orders are also messages indicating a trading interest on a trading venue, and conditional orders generally function in a similar manner to IOIs. A conditional order may contain the same attributes as other order types when a subscriber enters it onto the trading venue (e.g., side, price, and size), but NMS Stock ATSS will generally not

⁴ Regulation of NMS Stock Alternative Trading Systems, Exchange Act Release No. 76,474, 80 Fed. Reg. 80,998 (Dec. 28, 2015) (“ATS-N Proposing Release”).

transmit those details to other subscribers or market participants. Rather, the NMS Stock ATS will tentatively match the conditional order with contra side interest and then alert the subscriber that entered the conditional order of the potential match. That subscriber may then either accept or decline the execution (i.e., “firm up” the conditional order). Based on Commission experience, NMS Stock ATSs typically only permit conditional orders to execute against other conditional orders, but some ATSs allow conditional orders to interact with other order types.⁵

In this description of conditional orders, the Commission provided a more accurate depiction of the use of conditional orders – and their status as not “available at the venue.” In particular, the Commission described conditional orders as messages used by market participants to interact confidentially on dark matching platforms. In the ATS-N Proposing Release, the Commission further acknowledges the distinctions among various messages used by ATSs by listing them to include, among others, conditional orders, indications of interest, and actionable indications of interest. Absent clarification, the Proposing Release’s definition of actionable IOIs would be inconsistent with the Commission’s published understanding of conditional orders in the ATS-N Proposing Release and would result in unwarranted definitional and regulatory inconsistencies.

Importantly, BIDS believes that market participants view conditional orders in a manner consistent with the Commission’s use of the term in the ATS-N Proposing Release and thus as quite distinct from the common use of actionable IOIs.

As a result, BIDS would recommend that the Commission use a different term, such as indication of interest, to describe the information to be provided, but include in the adopting release language that distinguishes this term from either conditional orders, or actionable indications of interest in order to avoid unnecessarily disparate approaches to definitions among its rules. Or to the extent that the Commission deems information with respect to conditional orders used by broker-dealers to have value to market participants, BIDS suggests that a separate definition for “conditional orders” and, as a result, a separate category of information about conditional orders, may be appropriate in the context of the Order Handling Rules. BIDS believes that this clarification would assist both market participants and the Commission in obtaining information about the use of “actionable IOIs” in keeping with the purposes stated by the Commission in the Proposing Release. BIDS recognizes that the Commission may have intended the proposed definition of actionable IOIs to exclude conditional orders, without expressly stating such.

⁵ Id. at 81,067.

BIDS Trading thanks the Commission and the staff for its consideration of BIDS's comments.

Sincerely,



Timothy J. Mahoney
Chief Executive Officer

cc: Honorable Mary Jo White, Chair
Honorable Kara Stein, Commissioner
Honorable Michael Piwowar, Commissioner
Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
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