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November 6, 2009

By e-mail

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: File Number S7-21-09
Elimination of Flash Order Exception from Rule 602 of Regulation NMS
Release No. 34-60684

Ladies and Gentlemen,

Liquidnet, Inc. appreciates the opportunity to comment on the Securities and Exchange Commission's rule proposal to eliminate the flash order exception from Rule 602 of Regulation NMS (the "proposing release").

In the proposing release, the Commission notes that it is actively reviewing other forms of dark trading interest and requests comment and data on policy concerns raised by other mechanisms for accessing dark liquidity (also referred to as non-displayed liquidity).[1] We are writing specifically in response to this request.

Liquidnet and other systems that focus on execution of institutional block orders (we refer to them as "block order pools" or "block order systems") reduce trading costs for mutual funds and similar long-term investors by protecting the confidentiality of the institution's block order information from short-term traders in the market who can take advantage of that order information to the detriment of the institution.[2] Cost savings achieved by institutions when they trade through block order systems are passed on to tens of millions of households in the United States that invest in mutual funds[3], resulting in lower trading costs and higher investment returns.

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[1] Proposing release, pp. 33-34.
[2] As noted by the Commission in the proposing release: "If ... the interests of long-term investors and professional short-term traders conflict, the Commission previously has emphasized that 'its clear responsibility is to uphold the interests of long-term investors'". Proposing release, p. 16.
[3] According to the 2009 Investment Company Fact Book published by the Investment Company Institute ("ICI"), 52.5 million U.S. households (or 45% of the 116.8 million U.S. households) owned mutual funds at the end of 2008. Of these households, 80% (42 million households) owned equity mutual funds. www.icifactbook.org/fb_sec6.html.

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On October 21, 2009, the Commission held an open meeting at which the Commission approved the issuance of proposed "... amendments to the regulatory requirements that apply to non-public trading interest, including so-called 'dark pools' of liquidity."[4] After the hearing, the Commission posted on its website a fact sheet on "Strengthening the Regulation of Dark Pools".[5] We appreciate the Commission's statement in the fact sheet that the Commission's pre-trade proposals will provide an exclusion related to large orders.

We firmly believe that the institutional trader is the person best qualified to decide how to execute block orders for his or her customers in the most efficient manner. Institutional traders are constantly faced with the challenge to reduce trading costs for block orders. To the extent that we take away choices from the institutional trader in how to most efficiently execute a block order, we run a significant risk of increasing trading costs for the 42 million American households that invest in equity mutual funds and millions of other households that are pension fund beneficiaries. We hope that the Commission will solicit comment on the appropriate scope of the block order exemption and give due consideration to the views of institutional investors and industry experts, so we can preserve the institutional trader's ability to manage trading costs for block orders.

On a more general note, we believe that the current market structure issues are complex, and it is important to have a thoughtful and reasoned discussion of these issues so we can best address the challenges faced by long-term individual investors in the current market environment. In particular, we should identify the different categories of market participants and gain a better understanding of how they benefit from, or are harmed by, different aspects of the current market structure. In connection with the upcoming release on non-public trading interest, we would support the Commission hosting a roundtable that would include participation by institutional investors and industry experts.

We intend to submit a more detailed comment letter after the written rule proposal on regulation of non-public trading interest has been issued. We appreciate the Commission's decision to provide a 90-day period for comments on the proposed rule.[6] We believe more dialogue will create greater public awareness of how the equity markets operate and lead to better regulatory solutions, and we look forward to the ongoing discussion.

Very truly yours,

Seth Merrin
Chief Executive Officer

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[4] "Open Meeting Agenda", http://www.sec.gov/news/openmeetings/2009/agenda102109.htm.
[5] "Fact Sheet – Strengthening the Regulation of Dark Pools", http://www.sec.gov/news/press/2009/2009-223-fs.htm.
[6] "SEC Issues Proposals to Shed Greater Light on Dark Pools", http://www.sec.gov/news/press/2009/2009-223.htm.