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Flash Trading: The Creation of a Two-Tiered Market

I. Introduction:

Stock exchanges in the United States have undergone dramatic change in the last decade. Their conversion from not-for-profit entities controlled by their members into for-profit, publicly owned corporations has significantly altered the initial regulatory assumptions that allow stock exchanges to be self-regulatory organizations. The introduction of electronic trading media put substantial pressure on floor-based exchanges and encouraged stock exchanges to embrace electronic technology. The new profit incentives and ease of transferring information in the age of electronic communications led the exchanges to begin marketing the quotation and trading data to their members as required by law. The exchanges are now using the data entrusted to them as self-regulatory organizations to further their new profit-seeking objectives due to their obligations of their shareholders at the determent of the wider, non-institutional investor. [FN[1]]

In response, the Securities and Exchange Commission has substantially revised its regulation of the markets in light of several of these changes. A particular concern is that a result of the exchanges' profit-seeking structure has been to foster the creation of a two-tiered

[1] 1 Brook. J. Corp. Fin. & Com. L. 273.

market where large investors are charged market data fees in exchange for information on a quote not publically disseminated, thus granting them substantial trading advantages. Additional concerns are the transparency of the markets, the free flow of quote information based upon the National Best Bid and Offer requirements, and the practical inequities caused by disparate access to information on quote data.

On September 18, 2009 the Securities Exchange Commission, hereinafter "SEC" or "Commission", proposed to ban a practice called "flash-orders" in all types of markets, including equity exchanges, options exchanges and alternative trading systems, in an effort to address the inadvertent creation of a two tiered market. The Commission has articulated a concern that the exemption to relevant regulation allowing for flash orders is "no longer necessary or appropriate in today's highly automated trading environment." [FN[2]] This paper will examine the effects of flash orders on the market as a whole.

II. <u>Applicable Regulation - 17 C.F.R. 242.602 - The Quote Rule</u>:

The Securities Exchange Act of 1934 [FN[3]] declares that securities prices are susceptible to manipulation and that manipulation [FN[4]] precipitates, intensifies and prolongs national emergencies like the

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[2] Exchange Act Release No. 34-60684 (September 18, 2009).

[3] Pub. L. No 73-291, 48 Stat. 881 (codified as amended at 15 U.S.C. ss 78a – 7881 (1988).

[4] 15 U.S.C. § 78b(3) (1988).

depression that followed the stock market crash of 1929. [FN[5]] The Exchange Act address the problem by forbidding a variety of trading practices that it labels manipulative [FN[6]] and subjecting others to regulation. [FN[7]] It also gives the Securities and Exchange Commission plenary authority to regulate the use of "any manipulative or deceptive device or contrivance" in connection with securities transactions. [FN[8]] These laws were designed to prevent securities manipulation and have a renewed importance given the activities in the financial system we have recently experienced. [FN[9]]

Section 6(b)(5) of the Act, [FN[10]] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities,

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[5] 15 U.S.C. § 78b(4) (1988).

[6] 15 U.S.C. § 78i(a)(1)-(5) (1988).

[7] 15 U.S.C. §§ 78i(a)(6), (b), 78j(a) (1988).

[8] 15 U.S.C. § 78j(b) (1988). The organized securities markets have rules that prohibit manipulation. See, e.g., 2 Am. Stock Ex. Guide (CCH) P 9224 (Nov. 1989)(prohibiting trades for the purpose of influencing market price); Nat'l Ass'n Sec. Dealers Manual (CCH) PP 2155, 2168 (Sept. 1, 1976) (prohibiting manipulative quotations and the use of manipulative devices in connection with transactions); 2 N.Y.S.E. Guide (CCH) P 2435 (May 1990) (prohibiting the effecting of trades for the purpose of improperly influencing the market); see also id. PP 2342.21, 2351(e) (Nov. 1992) (requiring members to review trades).

[9] <u>Basic Inc. v. Levinson</u>, 485 U.S. 224, 230 (1988); see Steve Thel, The Original Conception of Section 10(b) of the Securities Exchange Act, 42 STAN. L. REV. 385 (1990).

[10] 17 U.S.C. 78f(b)(5).

to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The provisions of Section 6(b)(8) of the Act, [FN[11]] also requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In 1975, after active and far reaching hearings on the nation's securities markets, Congress adopted significant amendments to the Securities and Exchange Act of 1934. The amendments marked a major turning point in the regulation of the securities industry. Congress "directed" the Securities and Exchange Commission to "facilitate the establishment" of a "national market system" for the trading of securities. [FN[12]] The SEC has ceremonially referenced the mandate-- abbreviated to the now well known acronym "NMS"--in most all its rule proposals or concept releases on market structure. [FN[13]] Within the grand scheme of the National Market System regulation and requirements regarding the dissemination of the national best bid or offer information is what has more commonly become known as the Quote Rule.

More specifically, Rule 602 of Regulation NMS[14], and Rule 301(b) of Regulation ATS[15], i.e. alternative trading systems, govern the dissemination

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[11] 17 U.S.C.78f(b)(8).

[12] Securities Exchange Act of 1934, 15 U.S.C. §78k-1(a)(2) (2004).

[13] 1 NYUJLB 613

[14] 17 CFR 242.602.

of information regarding bids on securities. In particular, Rule 602(a)(1)(i)(A) states, in relevant part:

> (i) Each national securities exchange shall at all times such exchange is open for trading, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any national securities exchange by and responsible broker or dealer, but shall not include:
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>> (A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication.

Rule 301(b) of Regulation ATS applied more or less the same public quotation and dissemination rules to alternative trading systems.

Essentially, Rule 602 requires all exchanges to publically disseminate broker's best bids and offers on the sale or purchase of securities through the securities information processors. In other words, exchanges must provide and publish "best-priced quotation" information on the prospective exchange of securities to the public. [FN[16]]   The requirement to

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[15] 17 CFR 242.301b.

[16] Consolidated quotation data captures the best-priced quotations from exchanges, ATSs, and other trading centers for listed equities and options. This core data for a security is consolidated and distributed to the public by a single central processor pursuant to Commission rules.

disseminate the consolidated quotation data "was designed to provide investors with a single source of information for the best prices in a listed security…and assure that the public had affordable, accurate, and reliable real-time information on the best prices available for listed securities." [FN[17]] This design was aimed at achieving uniformity among the securities markets/exchanges and fostering confidence in the soundness of the exchange markets.

The exception to the Quote Rule found in Rule 602(a)(1)(i)(A) excluded bids and offers that are either "immediately executed" or, if not executed, "immediately cancelled or withdrawn" from being communicated or disseminated to the public as part of the best-priced quotation" data stream. It is generally accepted that the that maximum timeframe allowed by the Commission to still be considered "immediate" for purposes of an execution or withdrawal of a bid is 500 milliseconds, i.e. half a second.

In addition to the Quote Rule and also part of the Commission's National Market System regulation, is Order Execution rules. In August of 1996 the Commission adopted the Order Execution Rules that placed a duty on broker-dealers to obtain the "best execution". These rules required that broker-dealers obtain the best price or best bid when executing an order, and thus created a duty for broker-dealers to search out the National Best Bid and Offer of a security, that were in turn, required to be published by the exchanges and accessible to any registered broker-dealer. The

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[17] Exchange Act Release No. 34-60684 (September 18, 2009).

Commission made it clear, as a matter of federal law, that brokers were expected to live up to a duty of best execution, requiring them to use commercially reasonable efforts to get the best available prices for their customers.

In an effort to avert a two-tiered system and create equal access to information for all, the Commission reinforced the broker-dealers' duty by adopting Rule 605 and 606 of Regulation NMS. [FN[18]] Said rules respectively required market centers to disclose information concerning orders executed on their markets and required order-entry firms to disclose their order-routing policies and methods. This increased the amount of data available to order-entry firms and required them to publish how they were taking advantage of the data. [FN[19]]

III. <u>History & Exception of the Quote Rule</u>:

Under the Quote Rule (Rule 602 under Regulation NMS), exchanges historically have excluded from the public quotation data any bids and offers that are considered "ephemeral" or fleeting because they are either executed immediately or canceled if not executed immediately, i.e. within 500 milliseconds. This exception for immediate execution or withdrawal was first adopted in 1978 in order to facilitate manual trading in the crowd

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[18] 17 C.F.R. §242.605 (2006) and 17 C.F.R. §242.606 (2006).

[19] 1 Brook. J. Corp. Fin. & Com. L. 273, at 280 (Spring, 2007).

on exchange floors before the common use of automated trading. In that year, the Commission stated "that the rule as adopted reflects the fact that certain non-specialist participants in exchange crowds have bids and offers which, while narrowing the exchange quotation for an instant in time, never in fact become part of the quoted market of the exchange because they are withdrawn immediately if not accepted." [FN[20]]

In the days of floor-based trading, brokers engaged in face-to-face discussions of prices on the trading floor that, practically, could not be reflected in the public quotation data. However, since the evolution of the markets from face-to-face discussions on the trading floor to highly technological Electronic Communication Networks, (ECN), of today, quotation data can, as a practical matter, be publically disseminated at speeds that were unfathomable to the brokers on the trading floors of the late 1970s. [FN[21]]

IV. <u>Description of "Flash Orders"</u>:

In an effort to exploit the exception to the Quote Rule, the exchanges, yielding to the demands of their clients/brokers and other market pressures, began to offer services that allowed for the execution of

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[20] Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978).

[21] Article from Law Firm of Wilmer Hale, Propose Ban on Flash Orders: A New Chapter in the Market Structure Debate (Sept. 22, 2009).

"flash-orders". The term "flash orders" refers to a practice whereby a trading center/exchange will, at an instant, show subscribers of the trading center's data feed customer buy orders priced at the national best offer, or customer sell orders priced at the national best bid when the exchange has determined that it has no willing seller or buyer at the best quoted price. Rather than seeking out a seller in a competing trading center or exchange, the exchange "flashes" the order to certain of its participants. By doing this, the exchange is able to seek out willing sellers on its market who may have decided not to publically display their sell price. In general, market participants that receive flash order information have less than one second to respond with their own orders for possible execution against the flash order. [FN[22]] If the order is not immediately executed, it is withdrawn without exposure to the entire marketplace, or is routed to other exchanges and the exchange "flashing" that order will loose the transactional fees associated with selling that security on their exchange.

V. <u>Two-Tiered Effects of Flash Orders</u>:

A. Flash Orders Create a Dichotomy of Investors: Those With Access To a Beneficial Market, and Those Without.

[22] Time periods vary in length depending upon the exchange. See, e.g., CBSX Rule 52.6(a) (period of time not to exceed 500 milliseconds); ISE Rule 803, Supplementary Material .02 (period of time not to exceed one second). The SEC has recognized that allowable flash-trades are not to exceed a time period of 500 milliseconds.

Flash orders have the effect of excluding access to markets by creating a schism between two types of investors: those investors that have the capital means to build and maintain sophisticated technological equipment necessary to effectuate a flash order and those that don't. Given the nature and speed of flash orders, [FN[23]] only those market participants with pre-programmed systems capable of responding with the requisite speed will have a realistic opportunity to respond to a flash order. As a result, only those with most sophisticated trading systems are effectively able to access flash orders. This is true even where the market data feed containing the flash order information is available to any investor. Therefore, only those investors with the pre-programmed systems have access to the flash market that allow for a purchase of a security at a slightly cheaper price than that found on the traditional NMS, National Market System.

Getting flashed an order offers these privileged traders a distinctive advantage. When buy and sell orders come into an exchange, they are first flashed for typically less than a second to those paying to receive that data before they are available to everyone else. In a flash, the sophisticated systems of the elite traders can detect patterns and get a jump on other investors. Before others even see these orders, high frequency traders move in and move out. The effect of this advantage can

[23] Market participants generally have a second or less to respond to flash orders. See BOX Rules, ch 5, §16(b)(iii)(2(a)(one second); CBSX Rule 52.6(a)(no more than 500 milliseconds); ISE Rule 803, Supplementary Material .02(not to exceed one second).

be compounded by the fact that in today's market environment where electronic, high speed and high frequency trading exchange technology permits market participants to place and execute thousands of orders in multiple symbols in less than a second. [FN[24]]

Reported prices are one of the most important products of financial markets, and providers of market services, as well as the financial industry as a whole, has an interest in ensuring that reported prices reflect the price at which trades can be made. [FN[25]] The national best bid or best offer system (NBBO) and dissemination of such information is relied upon by the investing public to ensure that their orders obtain the best, reasonably available price. By permitting a two-tiered market and effectively restricting access to a market that may offer price advantages over the general market, flash orders erode market confidence that brokers are actually obtaining the "best" reasonably available price. If only those privileged few exchange members are given the opportunity to execute against a flash order that locks the national best bid or best offer, then the broader marked would be deprived of critical market information in a

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[24] The BATS exchange reports peak message rates of 166,000 per second, including orders, cancels and modifies.
http://www.batstrading.com/resources/features/bats_exchange_latency.pdf.

[25] See J. Harold Mulherin et al., Prices are Property: The Organization of Financial Exchanges From a Transaction Cost Perspective, 34 J.L. & ECON. 591 (1991) (developing the thesis that the product of financial exchanges is prices and that the function of exchanges is to establish property rights in price quotations); see also David E. Van Zandt, The Market as a Property Institution: Rules for the Trading of Financial Assets, 32 B.C.L. REV. 967 (1991) (explaining the market as a property-based system).

manner that affects not only other market participants that would be willing to execute against the better priced order but also would result in worse prices to those orders whose prices are determined by reference to the national best bid or best offer data available to the market as a whole. [FN[26]]

The negative aspects of the creation of a two-tiered market and unequal distribution of quote information is not unknown to the Commission, which had sought to curb such activities in the realm of alternative trading systems ("ATS"). In 1998 the Commission sought to address a situation where certain broker-dealers and other institutional investors had access to better priced orders than were available to the broader market. In response to this situation, the Commission adopted new regulation, Regulation ATS, and stated that the incorporation of all customer orders into the public quote stream would, among other things, improve NBBO and eliminate the unfairness associated with a two-tiered market system. [FN[27]] Additionally, the Commission required the immediate and public display of limit orders so that all market participants could access them. [FN[28]]

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[26] See Letter dated June 4, 2009 from Sephen Schuler and Daniel Tierney, Managing Members of GETCO, Global Electronic Trading Company, to Elizabeth Murphy, Secretary, Commission ("GETCO Letter") at 3.

[27] See, e.g., Securities Exchange Act Release No. 34-41297 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[28] See, e.g., Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (September 12, 1996). See also GETCO Letter at 2.

With respect to the present matter of flash orders, the Quote Rule is designed to ensure that all market participants have equal access to an exchanges' best bids and offers, since the NBBO is determined based upon the best bids and offers for a national market system across all exchanges on which it is traded. Allowing only those privileged few with access to better priced marketable orders, regardless of any amount of time seeing that thousands of trades can be accomplished in a matter of milliseconds, is inconsistent with the policy objectives of the Quote Rule. Such an allowance has a significant potential of negatively affecting the broader market, "including retail investors who rely on the NBBO to ensure that their orders obtain the best, reasonably available price." [FN[29]] Therefore, it is reasonable that the Commission prohibit the two tiered effect of flash trading, and remove the exception to the Quote Rule.

B. Flash Orders Compromise The Commissions' Regulatory Framework That Promotes Competition Between Exchanges.

The exchanges themselves can be structured to reduce manipulation. The prices reported from an exchange depend very much on the way that securities are traded in that market. Thus, different exchanges are likely to be more or less susceptible to different forms of manipulation. Those who operate the exchanges can arrange them so that manipulation is difficult,

[29] See GETCO Letter at 4.

but often run into external pressures that pit profit against anti-manipulative practices. [FN[30]]

As competition for listings and trading increases among securities markets, those who provide market services may find it worthwhile to perfect and offer measures that will protect the pricing process and discourage manipulation. [FN[31]] However, in light of the exception to the Quote Rule and allowance of flash trading, the exchanges' profit seeking structure has been to foster the creation of a two-tiered market where large investors are charged market data feeds beyond the means of smaller investors and then given faster access to that data, thus granting them substantial trading advantages as discussed in the previous section.

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30 79 Cornell L. Rev. 219 (1994) at 285.

31 See H. Kent Baker & Richard B. Edelman, AMEX-to-NYSE Transfers, Market Microstructure, and Shareholder Wealth, 21 FIN. MGMT. 60, at 72(1992) (surveying literature on issuer choices of trading market and concluding that issuers transfer listings from the AMEX to the NYSE when the latter offers liquidity benefits); Arnold R. Cowan et al., Explaining the NYSE Listing Choices of NASDAQ Firms, 21 FIN. MGMT. 73 (1992) (finding that issuers look to liquidity benefits when choosing between NASDAQ and NYSE markets); Charles C. Cox & Douglas C. Michael, The Market for Markets: Development of International Securities and Commodities Trading, 36 CATH. U.L. REV. 833, 842-43 (1987) (detailing the use of linked markets to preserve liquidity); Jonathan Macey & Hideki Kanda, The Stock Exchange as a Firm: The Emergence of Close Substitutes for the New York and Tokyo Stock Exchanges, 75 CORNELL L. REV. 1007, at 1014-16 (1990) (describing competition among stock markets); David M. Schizer, Note, Benign Restraint: The SEC's Regulation of Execution Systems, 101 YALE L.J. 1551 (1992) (arguing that competition among markets will yield the best mix of systems for executing trades); cf. Jerry W. Markham, The Commodity Exchange Monopoly-Reform is Needed, 48 WASH. & LEE L. REV. 977 (1991) (concluding that trading abuses would decline if exchanges were permitted to compete in trading particular contracts).

The National Market System is grounded in the notion of fair competition among individual exchanges, while at the same time assuring that all of these exchanges are linked together, through facilities and rules, in a unified system that promotes interaction among the orders of buyers and sellers in a particular National Market System stock. The consolidated quotation data incorporated in the national market system is designed to provide investors with a single source of information for the best prices in a listed security, rather than forcing investors to obtain such information by subscribing to all of the data feeds of the many exchanges that trade listed securities. The goals of both the national market system, and more specifically the consolidated quotation data, is to promote a free flow of information based upon the market value of a security for the purpose of trading that is accessible to all.

Competition among the markets promotes more efficient and innovative trading services that offer the greatest benefits for investors, both large and small. [FN[32]] Competition also supports the goals of both the national market system and consolidated quotation data by ultimately forcing broader investor access to the exchange of securities. In short, access shares an inverse relationship to the possibilities of inequalities in the market. By increasing the accessibility of investors to exchanges, as well as the quotation data streaming through those exchanges, the less likelihood a two-tiered effect will develop between investors due to a disparity in technological or capital resources.

Flash orders offer the potential for the order to trade on the preferred trading venue immediately at the best price publicly quoted in the market without having the order routed to another market, and for market participants receiving the flashed order information to trade against the order without having to publicly quote the best price. [FN[33]] In a recent speech to the Senate Banking Subcommittee on Securities, Insurance and Investment, James A. Brigagliano, Co-Acting Director of the Division of Trading and Markets for the Commission touched on this issue:

> The Commission's job is to make sure that the core principles of the Exchange Act – fairness, efficiency, and best execution – are maintained as the markets, and the environment

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[32] 1 Brook. J. Corp. Fin. & Com. L. 273, at 275 (Spring, 2007).

[33] The Harvard Law School Forum on Corporate Governance and Financial Regulation; SEC Proposes Flash Order Ban, Announces Market Structure Review: Annette L. Nazareth, Davis Polk & Wardwell, LLP (Sept. 24, 2009).

> in which they operate, change. So the challenge for regulators is to monitor these changes and update regulation when needed.
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> The flashing of order information could lead to a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for U.S.-listed securities that is available to some market participants through proprietary data feeds.
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> In addition, the recipients of the flashed order can trade at the same price as the displayed quote without publicly quoting themselves. At the same time, the investor who is publicly quoting may miss out on the opportunity to receive an execution. The recipients of the flashed order also may obtain an informational advantage by seeing and being able to react to orders in the market before others can. As a result, flash orders could lead to a two-tiered market where the public does not have equal access to information about the best available prices for listed securities. [FN[34]]

If the exception to the Quote Rule was removed, and exchanges were obligated to publically disseminate all of a broker's best bids and offers on the sale or purchase of securities, competition among exchanges for trading volume would increase. Exchanges would be required to handle marketable orders that they were unable to execute at the best displayed

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[34] Speech from James A. Brigagliano, Co-Acting Director, Division of Trading and Markets U.S. Securities and Exchange Commission, Before the Senate Banking Subcommittee on Securities, Insurance, and Investment. (October 28, 2009). See also Speech by SEC Commissioner: Statement at SEC Open Meeting, dated September 17, 2009, *available at* http://www.sec.gov/news/ speech/2009/spch091709mls-flash.htm. (Chairman Shapiro noted in her remarks at the Open Meeting that "flash orders have the potential to significantly undermine the incentives to display limit orders and to quote competitively," and cautioned that they detract from market efficiency by potentially "creat[ing] a two-tiered market by allowing only selected participants to access information about the best available prices for listed securities.")

prices differently than "flashing" the order to certain of its participants. The exchanges would be forced to route marketable orders away to execute against the best displayed quotations at another exchange. This would in turn promote fair competition between exchange markets, reinforce the reliability of best quotations and advance confidence among broker dealers that that are getting the best bid or offer in satisfaction of their duty bestowed on them by Regulation NMS.

C. Without Regulation, Market Pressures Encourage Exchanges to Offer Flash Trade Services Which Contribute to the Two-Tiered Market Effect.

There is a conflict between the business of exchanges and the interests the regulators are trying to preserve in removing the Quote Rule exception. The conflict arises when a particular practice becomes profitable for market makers, i.e. a few select and very sophisticated investors, at the exclusion of all market participants, namely retail investors. Client demand for flash orders encouraged many exchanges to offer the service in order to maintain market share of the exchange business and remain competitive.

Direct Edge was one of the first exchanges to offer flash trading as a service. Nasdaq and BATS launched their flash order types partly because Direct Edge's gain in matched market share in the recent past. In May 2009, Direct Edge's market share was 12.2 percent, compared with less than 7 percent in December 2008. Nasdaq implemented flash orders to compete with Direct Edge. “This gets us on a level playing field with competition…this benefits our customers, and client demand drove us to introduce this order type,” said Brian Hyndman, senior vice president for Nasdaq transaction services. For BATS, offering flash orders…was also a business decision. “We’re going down the path we are because the SEC has said it’s legal…if they authorize other firms to employ similar programs, BATS doesn’t want to be left disadvantaged [based on] market structures other venues may use,” said Joe Ratterman, CEO of BATS. NYSE Euronext also considered offering such services. “If the SEC is implicitly allowing private access to information, we’ll need to do it to be competitive,” said Joe Mecane, executive vice president for U.S. markets at the company. [FN[35]]

On July 27, 2009 Nasdaq CEO Robert Greifeld provided a letter to the Commission in which he called for the elimination of “any order types or market structure policies that do not contribute to public price formation and market transparency.” As of September 1, 2009, Nasdaq no longer offered services for flash trades. However, to date, no other exchanges have followed suit and the Commission, without regulatory action, cannot expect others to follow given the profit motives.

Because a significant part of each market’s revenue is generated through the execution of trades, and markets thus have strong incentives

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[35] See, e.g., Traders Magazine, Equities industry clashes over flash and step-up orders. July 2009 by Nina Mehta.

to maximize executed volume by attracting a high volume of order flow and executing as much of it as possible, flash orders provide a market with an additional opportunity to execute marketable orders when they do not have available contra-side trading interest at the best prices when the order arrives, and otherwise would be required to route them away. Therefore, the only alternative is to move forward with the proposed SEC action and ban flash orders by removing the exception to the Quote Rule found in Rule 602(a)(1)(i)(A).

VI. Conclusion:

In the proposal to eliminate the exception to Rule 602 the Commission stated the following:

> "The consolidated quotation data is designed to provide investors with a singe source of information for the best prices in a listed security, rather than forcing investors to obtain such information by subscribing to all of the data feeds of the many exchanges and ATSs that trade listing securities. The flashing of order information could lead to a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for U.S.-listed securities that is available to some market participants through proprietary data feeds. In addition, flash orders may significantly

> detract from incentives for market participants to display their trading interest publically…”

If the Commission is going to preserve the integrity of the consolidated quotation data system, encourage full public disclosure of market participants trading interest, promote competition among exchanges and allow equal and full access to the markets for all investors, long-term and short-term, they must remove the exception to Rule 602 found at Rule 602(a)(1)(i)(A).