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

Re: File Number S7-21-09

Dear Ms. Murphy:

Rosenblatt Securities, Inc., appreciates the opportunity to comment on the Securities and Exchange Commission's proposal to ban flash orders. We support the proposed ban in principle. But we also would like to draw a critical distinction between the automated flash orders that have appeared on the scene in recent years and the verbal representation of orders on exchange floors. Modern-day flash orders offer benefits to exchanges, ECNs, brokers and flash-order recipients — all at the expense of the public customers whose orders are being flashed. Verbal representation, on the other hand, allows brokers to achieve the best possible outcomes for orders that are not well suited to automated execution, all in a manner that protects retail and institutional customers.

In the proposing release, the Commission appropriately points out that flash orders have come into being as a result of a 1978 exception to Rule 602 (and its predecessor), which was designed to ensure the efficient operation of agency auction markets as they existed at that time. The manual markets of 1978 required verbal representation and negotiation to discover price, and the speed of these interactions made the publication of broker intentions impossible. The last thirty years have dramatically changed our markets, and today's regulation should not be hampered by historic concerns. The primary mission of the SEC, however, has not changed. We all depend on the Commission to encourage efficient price discovery through efficient securities markets, all while protecting public investors.

Flash orders should be judged in the same light as other order types and the market structures in which they are used. And we believe that these order types are indefensible by any standard appropriate to SEC scrutiny. Broadly speaking, they discourage liquidity providers from publishing bids and offers, provide substantial economic benefits to intermediaries that are not passed on to customers and leak information about client orders that can result in inferior trading outcomes for those customers. If liquidity providers are free to trade — or not trade — with incoming interest via the flash process, they are encouraged to forego posting bids and offers on exchanges and ECNs and instead simply await flash messages. Moreover, because of the way modern flash orders are structured — essentially turning routable market orders into limit orders that lock the market — the incentive for liquidity providers to choose flashes over public quotes increases when there is already ample displayed liquidity on the contra side of the flashed order. Such situations make it less risky for liquidity providers to take the other side of flash orders, and allow them to jump to the front of long time-priority queues in the displayed markets. Additionally, the recipients of flashed orders are not in any way restricted from trading in front of the flashed order if they so choose. They can do so on markets that did not originate or handle the flashed order, making effective surveillance of such conduct very difficult to achieve. Finally, we believe that in the vast majority of cases flash orders do not improve execution quality for customers. In some cases they actually work against customers' interest, while resulting in larger profit margins for the exchanges and brokers who use these order types and significant advantages for the recipients of flash messages. Brokers are not passing on cost savings from increased rebates or reduced fees to their clients, who may or may not be aware that their orders are being executed using flash functionality, and the time delay creates the risk of missing the market. The argument that investors are attracted to these products as a safe means to access otherwise unavailable liquidity is simply wrong. Most displayed markets today provide reserve and dark order types for clients concerned about the adverse impact of exposing their intentions. These are effective tools to prevent leakage of intention and offer liquidity that is constantly available to all liquidity seekers, as opposed to keeping orders away from our markets until receiving a flash.

Verbal representations as they exist today share nothing with the flash orders we have just considered. Instead, they provide a valuable and increasingly rare way for brokers to safely achieve the best possible execution for orders that, for various reasons, might not benefit most from being routed to a purely automated market. Since the implementation of Regulation NMS, which sought to enhance price discovery by encouraging displayed liquidity and fostering healthy inter-market competition, fear of information leakage has driven many participants away from lit markets and into an increasing dependence on dark pools and algorithmic solutions to execute large transactions. Some of these participants are only now slowly returning through the use of creative reserve and dark order alternatives. The hoped-for competition has created the most fragmented markets in our history and an increase in client orders being internalized rather than exposed to our markets. If these fragmented alternatives at least offered some diversity, we would be able to weigh these benefits against the inefficiency of fragmentation. But most of today's displayed market centers compete on price and speed only, offering brokers little choice when seeking liquidity for their clients. Two exceptions are Direct Edge, which created two very different markets in EDGX and EDGA while allowing them to interact creatively with each other, and NYSE Euronext's floor-based trading model for NYSE-listed and Amex-listed securities. While Direct Edge approached fully automated markets with a view toward creating a better alternative (not all of which we support, since we believe that their flash order type should be banned), the NYSE's Classic market combined automated order types with their specialists (now DMMs and SLPs) and agency floor brokers.

The NYSE's retention of human participants recognizes two important market realities. First, as impressive as technological advances in securities trading are, for certain transactions they are still inferior to non-automated communication. The Commission has acknowledged this by allowing brokers to verbally negotiate block trades in their offices without having to publish these negotiations. It is certainly a positive extension of this understanding to encourage more of these verbal negotiations to occur in a well-regulated, competitive marketplace rather than privately in a broker's office. Second, automated markets depend on programmers to write code to create their market structure. The most insightful programmer can only write code to deal with anticipated events. Our markets, however, are daily confronted with unanticipated situations that must be dealt with as efficiently as possible. This often includes verbal representation on the floor of the NYSE. When this verbal representation occurs to negotiate blocks, it benefits from taking place in the most regulated market in the country, and by far the largest single liquidity pool for NYSE-listed securities. When it is used to react to either unanticipated events or trading situations where "fully automated" is a less efficient alternative, the resultant bids and offers are executed immediately or published as a part of the disseminated quote. Of greatest interest to the Commission, however, is that verbally expressed bids and offers as they occur on the floor always benefit the public investor being represented. In an environment where fragmentation has, often intentionally, made certainty of best execution impossible, verbal quotes are exposed to the deepest, most competitive market available. Inhibiting their function would remove an important alternative to fully automated markets, and increase the likelihood that those orders not suited to black-box trading will be internalized rather than exposed to the public.

Verbal representation as it currently exists on the NYSE floor attracts significant institutional liquidity to the market, enhances price discovery, provides market information available to all participants through the floor brokers of member firms, and — not insignificantly — provides one of the few real alternatives to automated markets for public investors today. When better technology makes the need for verbal representation unnecessary, it will simply cease to be used, and we will support that evolution. But until then, it serves our markets well, and should not be circumscribed as part of the Commission's appropriate efforts to ban modern-day flash orders.

Sincerely,

Richard A. Rosenblatt
CEO
Rosenblatt Securities, Inc.