INVESTMENT COMPANY INSTITUTE

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November 23, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Elimination of Flash Order Exception from Rule 602 of Regulation NMS (File No. S7-21-09)

Dear Ms. Murphy:

The Investment Company Institute[1] supports the Commission's proposal to eliminate the exception for "flash orders" from the quoting requirements of the Securities Exchange Act of 1934.[2] An efficient and effective trading environment is critical to Institute members and the almost 90 million shareholders they serve. We therefore have supported the Commission's continuing efforts to address issues that may impact the fair and orderly operation of the securities markets and investor confidence in those markets. Resolving concerns regarding flash orders is another important step in these efforts.

Flash Orders

Flash orders generally are orders that trading venues disseminate for a very brief period of time, to a select group of market participants, before they are displayed or traded against displayed bids or offers. We share the Commission's concerns relating to flash orders: most significantly, the potential impact both on the public display of trading interest in general and on the specific orders that are flashed, as well as the possibility of the creation of a "two-tiered" market. The Release notes that the practical result of the proposal, if adopted, would be that any flash orders with non-marketable prices would need to be included in the consolidated quotation data and that the more frequently used practice of flashing orders with marketable prices to certain market participants would be prohibited.

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.45 trillion and serve almost 90 million shareholders.

[2] SEC Release No. 34-60684 (September 18, 2009), 74 FR 48632 (September 23, 2009) ("Release").

Increase Public Display of Trading Interest

The Institute has long advocated for regulatory changes that would result in more publicly displayed quotes, greater order interaction and, in turn, more efficient trading. Problems surrounding the lack of order interaction, its causes, and its impact on the securities markets have long confronted mutual funds. Because flash orders may discourage the public display of trading interest, the practice could be detrimental to the overall efficiency of the markets.

Decrease Misuse of Trading Information

As the Release notes, the flashing of orders to market participants creates a risk that recipients of the information could act in ways that disadvantage the flashed order. As the Commission correctly recognizes in the Release, those who are highly concerned about information leakage generally would be unlikely to flash their order information to a large number of "professional traders." Most mutual funds do not allow their orders to be flashed for this very reason, as our members report that the process of displaying orders to a select group of market participants could result in information leakage and, in turn, the frontrunning of their orders.

Prevent Creation of a Two-Tiered Market

Flash orders provide a "free look" to a select group of market participants and thus have the potential to create 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 listed securities. It is important to note that the free look that flash orders provide is not new. For many years, the specialists at the NYSE had the same informational advantage relative to other market participants and for many years mutual funds asked that this information advantage be eliminated. Our position has not changed. While in an electronic era, this advantage often occurs in milliseconds, it nevertheless is meaningful to those who receive it and have the capability to react to it, *i.e.*, those with the requisite electronic connections.

Promote Interests of Long-Term Investors

The Institute strongly supports the Commission's statement in the Release that, in its analysis of flash orders, it will uphold the interests of long-term investors and examine the extent to which they are helped or harmed by flash orders in the event there are conflicts between the interests of those investors and other market participants seeking short-term gain. Mutual funds execute large blocks of securities on behalf of their shareholders, which tend to be long-term, retail investors.[3] We believe that this objective should be equally applied to all market structure issues.

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[3] The Release requests comment on the potential impact of the proposal on exchange trading services other than flash orders. The Institute recommends that the Commission ensure that there are no unintended consequences for exchange trading services that facilitate the execution of large block orders that funds execute on behalf of their shareholders and that do not raise the policy concerns of flash orders.

Broader Examination of Market Structure Issues

We understand that in addition to this rule proposal and the Commission proposal relating to dark pools and other non-public trading interest,[4] the Commission intends to take a broad look at market structure issues. We strongly encourage this approach, as it will allow the Commission to take a measured approach to the reform of our current market structure and ensure that there are no unintended consequences of reform. We also believe that any specific market structure issue, such as flash orders, cannot be viewed in a vacuum.

We therefore look forward to a broader debate on market structure that will raise important questions about numerous aspects of our markets in general and their impact on investors. We will be commenting in much further detail on these issues in our comment letter on the Commission's dark pools proposal and any further reform proposals the Commission may make in the future.

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If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, or Ari Burstein at (202) 371-5408 or Heather Traeger at (202) 326-5920.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

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U.S. Securities and Exchange Commission

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[4] SEC Release No. 34-60997 (November 13, 2009).