



X-CHANGE FINANCIAL ACCESS LLC

November 23, 2009

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.W.  
Washington, D.C. 20549-1090

Re: File No. S7-21-09

Dear Ms. Murphy:

X-Change Financial Access LLC ("XFA") would like to comment on the SEC's proposal to amend Rule 602 of the Securities Exchange Act of 1934 ("Exchange Act") to eliminate the exception for so-called "flash orders."<sup>1</sup> XFA is a leading trade brokerage and execution agent for many exchange-traded derivatives, including thousands of equity options. We are the largest volume executing broker in contracts traded on the Chicago Board Options Exchange ("CBOE") year-to-date. We have floor broker operations at the major derivative exchanges, including the CBOE and the CME Group. As discussed below, XFA strongly believes that the SEC's proposal to prohibit the display of flash orders should not extend to an exchange's manual auction process. Otherwise, the proposal would effectively eliminate the ability to operate a floor-based exchange.

The Commission's proposal would eliminate the exception from the SEC's Quote Rule, Rule 602, for the use of flash orders by equity and options exchanges. As a result, any flash orders with non-marketable prices would need to be included in the consolidated quote and flashing orders at marketable prices to certain market participants would be prohibited. The proposal would accomplish this by eliminating the exclusion in Rule 602 for bids and offers communicated on an exchange that are either executed immediately after communication or cancelled or withdrawn if not executed immediately after communication. The Commission is concerned that the use of flash orders could detract from the efficiency and fairness of the national market system. In particular, the Commission is concerned that the use of flash orders caters to the needs of professional short term traders that have sophisticated trading systems capable of responding to flash orders at the expense of the interests of long-term investors. The SEC also is concerned that the use of flash orders may create a two-tiered market in which the public does not have access to the best available prices.

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<sup>1</sup> Securities Exchange Act Release No. 60684 (September 18, 2009).

XFA is not commenting on the entirety of the Commission's proposal, but rather with the proposal's inclusion of the flash order ban to the manual trading floor auction process.<sup>2</sup> In the proposing release, the Commission discussed the historical practices of manual exchanges in having orders worked on the trading floor via "on the spot discussions" of price which can not practically be reflected in the published quotation. The Commission goes on to note that if it were necessary to make public the terms of orders being worked by floor brokers, it would interfere with and might make impossible the effective representation of such orders on the floor of an exchange. Similarly, the Commission notes that it may be impractical to require the publication of the responses of the trading crowd to a floor broker's request for a market, and that it would significantly impair a broker's ability to represent large orders effectively. XFA agrees completely with this analysis by the Commission. The Commission nevertheless in the proposing release then goes on to include the manual "flashing" of orders to exchange crowds in its amendments to Rule 602.

It is unclear from the proposing release whether the SEC's intention is to continue to exclude traditional trading crowd interactions from the definitions of bids and offers or whether the Commission intends to capture such interactions in its flash order proposal. We strongly believe that brokers should be able to represent orders in an exchange trading crowd and obtain responses to a request from a market without having these vocalizations deemed bids or offers under Rule 602. These vocalizations are merely part of a competitive auction process to seek out price and liquidity discovery and obtain price improvement over displayed prices. For the same reason, the proposing release stated that exchange mechanisms such as price improvement auctions and various types of facilitation and exposure mechanisms for large orders would not be included in the flash order ban. The Commission thought that the orders exposed on these mechanisms generally would not constitute bids and offers that must be provided to the consolidated quote stream, nor would the responses to those orders if they were actionable only with respect to the exposed order. We see no reason why vocalizations by floor brokers and a trading crowd on an exchange floor should be treated any differently. Such vocalizations are part of a competitive auction process to obtain price improvement. They are fleeting interactions conducted in the open on a trading floor to seek out contra-side interest, usually for orders of large size. Consequently, the Commission should clarify that manual floor trading crowd interactions are not deemed bids or offers under the Quote Rule.

If trading floor vocalizations are not exempted from the definition of bid or offer, then the ability to work an order on an exchange floor would be crippled severely. It would be impossible to conduct trading crowd interactions if each vocalization had to be published in the consolidated quote. Trading crowd vocalizations are immediate interactions between crowd participants that could not occur effectively if the vocalized price had to be submitted to the consolidated quote. In fact, we expect that without the continuation of the exemption from the Quote Rule for these vocalizations, the existence of manual trading floors would be in dire jeopardy.

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<sup>2</sup> While not commenting on the entire proposal, we nevertheless believe it is unwarranted to apply the proposed amendment to the options markets. The options markets operate differently from the stock market in many ways that make a ban on flash orders unnecessary and counterproductive if applied to the options exchanges.

We do not believe that it is in investors' interest or part of the Commission's intention to take action to effectively eliminate manual trading floor exchanges. Moreover, such a result would be ironic given the Commission's concern in the proposing release that the needs of high frequency traders not trump those of long term investors. Orders worked in a manual trading crowd are the antithesis of high frequency traders. They involve trading interest from investors who want their orders worked patiently and diligently to obtain price improvement. They primarily are large or complex orders that require professional handling in a sensitive and interactive process with a trading crowd. These orders are from true long term investors, and their ability to have their orders worked on an exchange floor should not be eliminated due to any SEC concerns over the electronic flashing of orders to high frequency traders.

In conclusion, we urge the Commission to make clear that exchange trading floor negotiations (including orders worked by a floor broker in a manual exchange trading crowd and responses by a manual exchange trading crowd to a request for a market) are not bids or offers within Rule 602. XFA is appreciative of the opportunity to express its views on the SEC's proposal. If the SEC staff has any questions regarding the issues discussed in this letter, please contact me at (312) 447-0982.

Sincerely,



Michael G. Vitek  
President and Chief Operating Officer

DC #062013