

November 25, 2009

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549 - 1090

**Re: Elimination of Flash Order Exception From Rule 602 of Regulation
NMS; File No. S7-21-09 (SEC Release No. 34-60684).**

Dear Ms. Murphy:

optionsXpress, Inc. ("optionsXpress") is an online registered Broker-Dealer and Futures Commission Merchant that provides an online trading platform and execution services for over 340,000 self-directed investors that utilize derivatives as a necessary tool in a holistic investment approach. optionsXpress is a member of all major Securities Exchanges and Commodity and Futures Exchanges. optionsXpress' Designated Examining Authority is the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange"). On behalf of itself and its retail individuals and entities that place self-directed orders for their individual, joint, IRA, and corporate accounts, optionsXpress welcomes the opportunity to comment on the Securities and Exchange Commission's ("Commission") proposed amendment to Rule 602 of Regulation NMS under the Exchange Act, which would eliminate an exception for the use of flash orders by equity and options exchanges to the detriment of retail options investors (the "Proposal").¹ As discussed below, optionsXpress opposes the elimination of flash orders in the options markets.

The Commission has expressed concern that the use of flash orders may create a two-tiered market in which the investing public does not have access to the best available prices. optionsXpress believes that the effect that the Proposal will have is just that - inflated costs for those retail investors that the ban seeks to protect. optionsXpress respectfully requests that the

¹ optionsXpress does not engage in proprietary trading.

Commission consider revising its Proposal to permit the continued use of Flash or Step-up Mechanisms in the listed options markets, which greatly benefit long-term retail investors.²

While a review of the listed market structure is a healthy response to recent events, we emphasize that the listed marketplace has performed very well despite the economic turmoil of the last two years. The turmoil was primarily caused by non-transparent marketplaces that were poorly regulated. Self-directed investors, like our customers, have performed well³ and have embraced several risk reducing strategies to weather the market downturn. More than ever, the self-directed investor has access to real time market data, advanced strategy tools, educational content focused on reducing risk and enhancing return, and most importantly low-cost access to transparent liquidity. Implementation of the Proposal eliminating flash orders will increase the cost of trading options for retail investors. This will discourage retail customers from trading options as a means to diversify their portfolios at a time in which the self-directed retail investor has realized the benefit of using derivatives as a hedge for their investment portfolio.⁴ The Proposal makes option trading more expensive for customer-range investors seeking equal access to the option markets. Any changes to current market structure should be well considered, focused on macro concerns, and not done piecemeal.

I. The Commission should recognize that the Role of Flash Orders in the Options Marketplace is Different from the Equity Markets.

In regards to flash orders, we believe the Commission should focus on the particular behavior in the equity markets that sparked this review and compare that to the very different

² In addition, optionsXpress encourages the Commission to enact access fee caps to the listed options markets. See Release No. 34-60711; File No. SR-NYSEArca-2009-44 n. 49, "the Commission staff is currently considering the issue of access and access fees in the context of its ongoing consideration of a petition for rulemaking requesting that the Commission impose a cap of \$.20 on certain transaction fees." (September 23, 2009).

³ optionsXpress "ended the quarter with record customer assets, a testament to the quality of our platform and the value self-directed investors place on being able to use derivatives as part of a balanced long-term investment strategy." optionsXpress Holdings, Inc. Q3 Earnings Call Transcript, October 20, 2009.

⁴ Between December, 2007 and October, 2008, optionsXpress' customer assets have decreased less than the market average (S&P 500 and NASDAQ).

way flash orders operate, and the important role they play in the options markets. The many auction processes in the options markets need to be considered separately from the equity markets because the two are inherently different.

- First, the options markets do not allow for internalization which exists in equities.
- Second, the options markets do not currently have a cap on take fees that opportunistic exchanges can charge retail customers.⁵
- Third, because of the large number of strikes and months for each of the underlying equities on which options are traded, market-makers in the options markets are needed to maintain orderly and competitive quotes. This results in market makers in the options markets bearing a greater amount of displayed risk in options, which provides the opportunity for improvement on the market makers' quote on an order by order basis (particularly for smaller retail orders).

The data provided by Chicago Board Options Exchange and International Securities Exchange in their Comment Letters responding to the Proposal make clear that flash orders are such a small percentage of volume that they benefit the retail customers while not impacting the quality of quotes.⁶ The benefits that may accrue to the Maker if a flash ban is approved is marginal in sharp contrast to the quantifiable costs to the retail customer - an estimated \$13,309,429 per year costs in the options market according to the Commission.⁷ Further, because options are derivatively priced based on the price of the underlying stock, orders submitted through a flash process are less likely to have any "market impact" in comparison to the potential impact of a stock order.

⁵ optionsXpress encourages the Commission to further consider Citadel's Comment relating to fee caps. See Letter from John C. Nagel, Managing Director & Deputy General Counsel, Citadel Investment Group L.L.C. ("Citadel") to Nancy M. Morris, Secretary, Commission, dated July 18, 2008 ("Citadel Letter"). The Citadel Letter cited to Citadel's comments made in a letter from John C. Nagel, Managing Director & Deputy General Counsel, Citadel to Nancy M. Morris, Secretary, Commission, dated July 15, 2008 (Petition for Rulemaking to Address Excessive Access Fees in the Options Markets) ("Petition for Rulemaking").

⁶ See Letter from William J. Brodsky, Chicago Board Options Exchange, Inc. to Elizabeth M. Murphy (November 18, 2009) in response to the Proposal, and Letter from Michael J. Simon, International Securities Exchange, LLC, to Elizabeth M. Murphy (November 23, 2009) in response to the Proposal.

⁷ Release No. 34-60684; File No. S7-21-09 at p. 43.

II. Flash order types provide brokers with choices for achieving best execution for their customers.

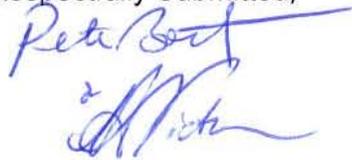
Within the options markets there are three types of “flashes” that exist. The first is the electronic flash that is shown to market participants on an exchange that receives an order that is marketable on another exchange before it is routed out. These types of flash orders take place on traditional exchanges, often when there are maker/taker exchanges representing the best bid/offer (“NBBO”). As the Commission acknowledges, these flashes (that often include incentives to those participants to match the away market) allow for retail orders to be traded at NBBO without paying the fees associated with maker-taker exchanges. In short, they reduce fees for retail investors. A second type of flash order in the options market is a price-improvement auction where a customer order is “stopped” at NBBO (meaning the order is guaranteed a fill at the best displayed price) while seeking to fill the order at a price even better than NBBO for the customer. These price improvement auctions offer the best expected experience *or better* for retail customers. We understand that the Commission has suggested that these particular auctions fall outside the proposed ban, but we also understand there are several new orders types being introduced by exchanges that blur the line between these auctions and the flashes that match NBBO. The third type of flash order in the options markets is open outcry in which a broker negotiates a price on an exchange floor. While slow and sometimes inefficient, this method is a choice particularly popular for brokers with larger or more complex orders. All three of these flash order types provide brokers with choices for achieving best execution for their customers. We do not believe regulation should reduce these choices.

optionsXpress requests that the Commission carefully consider the dynamics that differentiate the options market from the equities market. We encourage the Commission to embrace the retail investors using options to reduce risk and enhance return. The options marketplace, with over 330,000 listed series, needs market-makers to provide continuous liquidity to investors in a transparent fashion so that they have choices in their decision to hedge risk or enhance returns, but flash orders are critical to the provision of liquidity that enable our markets to function and flourish. In view of the new exchange applications and existing exchange rule filings, the Commission should consider this seriously. Exchanges should bring competition and innovation benefitting the investing public. Market structures and fee proposals

that provide short-term benefits to sophisticated proprietary firms that seek to put themselves between true liquidity providers and customer orders, at the expense of both, should be considered carefully before implemented. All exchanges should have similar obligations in regards to minimum listing and quoting requirements. Failure to do so harms the very public interest and investors that the Exchange Act was designed to protect.

For the foregoing reasons, optionsXpress urges the Commission to revise its Proposal to permit the continued use of Flash or Step-up Mechanisms in the listed options markets, which greatly benefit long-term retail investors. optionsXpress appreciates the opportunity to comment on the Proposal. It is our hope that the Commission will respond affirmatively to optionsXpress' petition which ultimately will serve the investors that the industry seeks to protect.

Respectfully Submitted,

Handwritten signatures in blue ink. The first signature is "Peter Bottini" and the second is "Hillary Victor".

Peter Bottini, EVP Trading and Customer Service
and

Hillary Victor, Associate General Counsel