



National Investor Relations Institute

8020 Towers Crescent Drive, Suite 250, Vienna, VA 22182
(703) 506-3570 FAX (703) 506-3571
Website: www.niri.org

February 16, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F St, NE
Washington, DC 20549-1090

Re: Regulation of Non-Public Trading Interest
File No. S7-27-09

Dear Ms. Murphy,

This letter is submitted on behalf of the National Investor Relations Institute (NIRI). NIRI is the professional association of corporate officers and investor relations consultants responsible for communications among corporate management, shareholders, securities analysts and other financial community constituents. Founded in 1969, NIRI is the largest professional investor relations association in the world with more than 4,000 members representing 2,000 publicly held companies and approximately \$5.4 trillion in stock market capitalization.

Introduction

NIRI is pleased to comment on the referenced proposal that is designed to promote the Exchange Act goals of transparency, fairness and efficiency. NIRI recognizes the SEC's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. NIRI believes public company access to timely, accurate and transparent information regarding their shareholders' ownership positions – both long and short – is an important element of the SEC's mission. NIRI supports the SEC's investor protection mandate, and believes that our financial markets must be structured, regulated and monitored such that one type of investor is not disadvantaged by another type. By seeking to increase pre- and post-trade transparency, NIRI believes this proposal furthers the SEC's mission by improving public access to information, and NIRI supports and appreciates the SEC efforts. NIRI is particularly pleased with the proposed change to increase post-trade transparency by ensuring there is the same level of post-trade transparency for dark pools (and other ATS's) as for registered exchanges.

Possessing no specialized research into the specific changes proposed, NIRI *can* offer insight into public company/shareholder relations that may be useful as the SEC evaluates these changes. NIRI is unique in representing the common interests of issuers, a segment of whose shareholders have become more transient over the past several years. Based upon the increasingly high-speed nature of equity trading, and resulting increases in trading volume, shareholders with a long-term a "buy and hold" perspective represent a smaller portion of

trading volume compared to other market users. Therefore, NIRI would like to make the following observations:

Market Considerations

1. **Market Integrity** – NIRI is concerned about the prospect of negative unintended consequences resulting from a market structure change undertaken without a complete examination of possible long-term effects. NIRI recommends the SEC study the effects of the proposed changes on the trading of different equity types, as well as if there are any negative implications related to the options, futures and derivatives markets. For instance, how will these changes impact the trading in small cap stocks versus larger cap stocks? While enabling investors to trade large blocks of stocks efficiently and effectively is important for all issuers, it is especially important for small and mid cap stocks that are typically less liquid and thus more difficult to trade without moving the market.
2. **Market Structure** – In today’s market structure, dark pools provide an important function for investors by allowing large block trading with efficiency and anonymity. NIRI urges the SEC to proceed with a thorough understanding of dark pools’ price discovery role. If, for example, the proposed changes result in advantages to short term traders at the expense of long term investors, this does not foster fair, free markets for all participants in keeping with the SEC’s mission and investor protection role. We appreciate the SEC’s focus on large block orders by considering appropriate exceptions to facilitate execution of these large blocks orders. We also recommend the SEC continue to provide sufficient market flexibility to enable efficient execution of these types of orders.
3. **Investor Protection** – NIRI is concerned that the proposed changes may result in large institutional order flow moving to internal over-the-counter transactions within a broker dealer or to “upstairs” markets. What are the ramifications of this, particularly as related to any potentially negative impact on other investors? What would be the impact on spreads and the price discovery process?
4. **Regulatory Oversight** – Public companies have no ability to direct the location of trading activity of their equities and have been a bystander as trading has expanded from traditional exchanges to ATS’s and ECN’s. While market structure evolution is inevitable and healthy, NIRI believes the same regulatory oversight, market surveillance, reporting, and other investor safeguards that exist for exchanges should be in place for all trading venues to ensure maximum investor protection.
5. **Market Complexity** – Markets have become extremely complex. Manipulative trading practices that take advantage of this complexity, whether acting on non-public order knowledge due to information leakage, front running regular market participants for personal gain or other fraudulent schemes, clearly disadvantages long-term investors and may result in higher equity prices for all investors. As noted, market surveillance is critical to ensure market integrity. NIRI supports market

competition and innovation, but only in an environment of truly equal competition and adequate oversight.

6. Capital Formation – A primary reason that public companies list their shares publicly is to access cost-effective capital afforded by the U.S. capital markets. Throughout history, in markets of various types, the needs of equity market participants with differing time horizons have been balanced through vibrant wholesale and retail markets. Any changes outlined in this proposal (or others to be considered by the SEC) must ensure U.S. capital markets remain vibrant. Market structure changes must be designed to draw capital in, rather than driving companies to avoid U.S. capital markets for another capital raising process.

Conclusion

NIRI is pleased to provide these comments as the SEC deliberates changes to dark pool transparency. NIRI believes the SEC should continue to examine market rules to allow for as much transparency as practical into shareholder ownership – both long and short – at the time of trading as well as over time. As stated, NIRI supports the proposed changes in that increased pre- and post-trade transparency improves publicly available information, promotes capital formation and furthers the SEC’s investor protection mission, for all trade execution platforms, including dark pools.

Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Morgan". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Morgan" clearly distinguishable.

Jeffrey D. Morgan, CAE
President & CEO