The Security Traders Association of New York, Inc.

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

RE: Release No. 34-60997: File No. S7-27-09
Regulation of Non-Public Trading Interest

Dear Ms. Murphy:

The ***Security Traders Association of New York, Inc. ("STANY")*** respectfully submits this letter in response to the Securities and Exchange Commission's (the "SEC" or the "Commission") request for comments on Release No. 34-60997, File No S7-27-09 "Regulation of Non-Public Trading Interest" ("the Release").

STANY is the voice of the trader in the New York metropolitan area and represents approximately 1,200 individuals who are engaged in the trading of equity securities. As such, we are uniquely qualified to discuss rules and regulations affecting the purchase and sale of equity securities. ***STANY*** is the largest affiliate of the Security Traders Association ("STA"), a multinational professional association that is committed to being a leading advocate of policies and programs that foster investor trust, professional ethics, and marketplace integrity and that support education of market participants, capital formation, and marketplace innovation.

Neither ***STANY***, nor STA, represent or speak for a single business model, but rather, the Associations provide forums for professionals employed by institutions, broker-dealers, ATSs and exchanges to share their prospective on issues facing the securities markets. Our members work together to promote their shared interests in efficient, liquid markets, as well as in investor protection.

We believe that strong efficient markets that support capital formation require an appropriate balance between effective regulation on the one hand and innovation and competition on the other. We support innovation in the markets and believe that competition is the best driver of innovation and market improvements. We appreciate and support the existence of various centers of liquidity- including registered exchanges, ATSs, and market makers- the existence of which provide choices for investors and help to maintain the primacy of the US capital markets.

The Release and the more recently issued Concept Release on Equity Market Structure ("Concept Release") [1] are of keen interest to our members. As can be expected given the diverse nature of our membership, opinions concerning the merits and advisability of various elements of the Release differ amongst our members. In as far as possible, we have attempted to put aside the various business models and address the issues raised by the Release with consideration of what is best for the US markets.

[1] Securities and Exchange Release No. 34-61358, File No. S7-02-10

“DARK” LIQUIDITY

The vast majority of our members agree with the Commission that some measure of “dark” liquidity in the markets is appropriate. Contrary to some misperceptions among the public “dark” liquidity is not nefarious. The Commission has acknowledged that there is a need for targeted size discovery mechanisms that enable investors to trade efficiently in size orders. “Dark” liquidity, in various forms, has served to facilitate size discovery for decades.

Although “dark” liquidity has existed in many forms for as long as people have been trading equities, technological changes, the advent of algorithmic trading and the explosion of micro second trading has given rise to questions about “dark” pools. We can understand the Commission’s desire to review the regulation of “dark” pools at this time. We are hopeful that the discussion of “dark” liquidity engendered by this Release will help market participants and the public better understand alternative trading venues and the role that they play in the markets.

As the Commission has acknowledged “dark” liquidity exists for a number of reasons and in a number of forms. Under Reg. NMS clients retain the option to display orders (and have them protected by the Trade-Through Rule) or not to display orders to the public.[2] The Commission, in fashioning Reg. ATS, encouraged the development of business models that compete with traditional liquidity pools. It is therefore axiomatic that the Commission understands that “dark” liquidity plays a legitimate and even valuable role in the equity markets. Contrary to the public perception, rather than serving as venues for illicit, mysterious or nefarious trading activity, “dark” pools offer market participants alternative sources of liquidity and choices of execution venues. Alternative- off exchange- liquidity is accessed by broker-dealers on behalf of retail customers and institutions on behalf of their mutual fund investors as well as by traders with proprietary interests.

Although the Commission has consistently sought to promote the public display of orders, it has, with the exercise of sound judgment, never sought to prohibit trading venues from offering “dark” liquidity services to investors. It appears to us that the Commission’s concern is not with the existence of “dark” liquidity but rather with “grey” liquidity- liquidity that purports to be “dark” but which is actually “lit” to some but not all market participants.

Proposal to amend the definition of bid and offer to include “actionable IOIs”

Indications of interest (“IOIs”) have been used by market participants since trading of equities began. In general, we agree that if an IOI is immediately executable and has all of the earmarks of a bid or offer it should be treated as a bid or offer, and subject to the same rules pertaining to bids and offers.

However, we would like to see further clarification of certain aspects of the Commission’s proposal to amend the definition of “bid” and “offer” to explicitly include “actionable IOIs.” As proposed it appears that an IOI may be deemed actionable without specific mention of price, size or even side of the trading interest; leaving symbol as the only required element of an “actionable IOI.” We believe that this definition is too broad. We would suggest that something more than symbol is necessary for both parties to understand the terms of the offer and act upon it. We request that the Commission provide more clarity on what it will deem to be an “actionable IOI”. For example, we would suggest that symbol- only messages should not be considered actionable.

Although we do not oppose the inclusion of “actionable IOIs” in the definition of “bids” and “offers” we caution that the changes proposed may not have the effect intended by the Commission. While the amended definition of “bid” and “offer” may push some dark orders into the lit market, it is unlikely to

[2] Rule 604 of Reg. NMS explicitly recognizes the ability of customers to control whether their limit orders are displayed to the public. Rule 604 (b)(2) provides an exception from the limit display requirement for orders that are placed by customers who expressly request that the orders not be displayed and Rule 604 (b)(4) provides an exception for all block size orders unless the customer explicitly requests that the order be displayed.

have the impact on transparency that the Commission anticipates. It is more likely that a greater number of orders will become fully "dark" as opposed to fully "lit." We do not believe that market participants- whether as agents or principals- who currently choose to execute in the "dark" (or "semi-dark") will elect to place their orders in the public quote stream. The Commission's proposal will not change these market participants' reasons for seeking to execute their orders away from the public markets.

The Commission has long desired and encouraged the public display of limit orders. The primary rationale for the trade-through rule in Reg. NMS was the Commission's belief that trade-through protection would encourage limit order display and thereby enhance transparency. Members of the trading community, including ***STANY***, expressed doubts as to the efficacy of the trade-through rule and rules mandated transparency. In our letter to the Commission dated January 24, 2005, ***STANY*** suggested that the trade-through rule would have little or no positive impact and was not likely to achieve the Commission's sought for result of expanding the placement of limit orders. We noted that "institutions and other investors hesitate to place limit orders….because limit orders act as free options to the market and carry with them market impact costs."

As with the trade-through rule, there is no reason to believe that the proposed changes will result in an additional placement of limit orders or a significant increase in displayed liquidity. Orders that would have remained on some trading firm's desk are now in a more executable state residing in a "dark" pool. Turning more light onto a "dark" pool is not going to bring all those orders into the displayed market. Many will just move back to a less executable state on the trading firm's desk.

Block Trading Exemption

Market participants who need to trade in large size, such as institutional investors, interact with non-displayed liquidity as a way to minimize information leakage and transaction costs. The need of large investors to control the public display of their trading interests was recognized by the Commission and an exception from the public display requirements of Reg. NMS was wisely carved out. We agree with the Commission that there is a need for a block trading exemption; without the inclusion of which we would have significant concerns with the proposal. We do, however, think that as proposed the block exemption is too narrowly drafted and will not fully achieve the Commission's goals.

We would suggest that an expanded definition of block size would better facilitate the efficient execution of block orders for large, mid, small and micro cap stocks. We believe that a definition of a "block" order should take into consideration not just the monetary value of the order but also the number of shares in the order and the percentage of the number of shares relative to the average daily trading volume. For example, defining a "block" trade as one with a principal value of $200,000, or an order of 10,000 shares or more[3], or an order that represents 1% or more of a stock's average daily trading volume would more accurately reflect the realities of block trading in various equities. This expanded definition, would better serve to achieve the intentions of the Commission in proposing a block trading exemption and recognize that the impact of trading a "block" in small cap; low priced, illiquid stocks can be as, if not more significant than a $200,000 order of a well capitalized, highly liquid security.[4] The Commission should also consider a potential exemption for large program orders.

Reduction of the threshold for display requirement under Regulation ATS

We think is it prudent for the Commission to consider what role "dark pool" and ATSs should play in the capital market structure of the US markets. However, prior to significantly reducing the display threshold for ATSs, we would like to see a review and study of the potential impact on the markets of a reduction of

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[3] Rule 600 (b) (9) of Regulation NMS defines "block size" to mean an order of at least 10,000 shares; or for a quantity of stock having a market value of at least $200,000.

[4] In today's market the average trade size is 1/7th the size it was 12 years ago. Given the significant decline in average trade size, we suggest that the Commission consider whether an adjustment in the number of shares used to define a "block" might be appropriate.

the average daily trading requirement threshold of the order display requirements in Rule 301(b) (3) of Regulation from 5% to .25%. We question whether such a dramatic reduction is prudent or warranted.

Reg. ATS was proposed and implemented in 1998 with the intention of balancing the benefits of reducing barriers to entry for non-exchange trading venues with the need for appropriate regulation and coordination among exchanges and non-exchange trading venues. At that time the Commission set 5% of the daily trading volume per ATS stating that it "believed that those alternative trading systems with less than 5% of the volume would not add sufficiently to transparency to justify the costs associated with linking to a market."[5] The 5% threshold has reduced the barrier to entry into the market and has heretofore been extremely successful in allowing innovative firms to enter the market and compete successfully. This competition has not only provided investors and traders with enhanced execution choices, but has resulted in increased liquidity and lower trading costs for all market participants.

The Commission now believes that that the 5% threshold is too high and that developments in the markets warrant a reduction in that threshold. That may be the case, but we are concerned that the reduction of this threshold from 5% to .25% may be too significant and may act as a barrier to further innovation and entry of non-exchange venues that can offer competitive advantages to the markets.

We believe that the proposed.25% threshold is so low as to effectively be a 0% threshold. The result of this significant level of decline in the threshold would be to move from a system where institutions and other market participants using ATSs have full discretion on how to trade their block orders, to a system where institutions will only have two choices – fully lit (show the order to everyone) or fully dark (show the order to no one) – with a limited exception for block-to-block display.

Dark pools account for a much smaller portion of total trading volume than the media and populist sentiment against them would imply. Using the numbers provided by the Commission in the Release, the number of active "dark" pools trading NMS stocks in 2009 was 29 (up from 10 in 2002) but these 29 "dark" pools account for only 7.2% of execution volume. The vast majority- 92.8% of the volume in NMS stocks- is executed away from "dark" pools, making the perceived problems with dark pools much less of an issue than the Commission or the media would have the public believe.

We cannot anticipate what impact the proposed significant reduction will have on ATSs in the market or on the future entry of additional non-exchange trading venues. Rather than reduce the threshold by 95% as proposed, we suggest that the Commission consider the impact of the change and perhaps opt for a less drastic reduction as it tests the impact of a threshold reduction on the markets. Although we hesitate to select an arbitrary number, perhaps a pilot program testing the impact of a 1% threshold, consistent with the threshold for CQS market makers, would be appropriate.

Post Trade Transparency for ATSs

Currently trades executed by ATSs are reported to the consolidated trade stream through a trade reporting facility operated by FINRA on behalf of an exchange or through FINRA's Alternative Display Facility ("ADF".) All trades that take place in ATSs are reported to exchanges in real time providing the public with an accurate view of the price at which the securities traded. These trades are reported to the consolidated tape as OTC (this includes ATS trades as well as trades done in other non-exchange venues) without identifying the executing broker dealer or ATS. The investing public is able to see timely and accurate reports of these transactions. The only information that is not currently included in the consolidated market data available in real-time is the identity of the ATSs at which a trade was executed.

Presently, ATSs, reporting trades to FINRA in real time on FINRA's "Trade Report Facilities" (TRF) sponsored by exchanges and attach their unique market marker identifies to the reports. This information is available to FINRA and, in turn, the Commission for regulatory purposes. With this information regulators

[5] Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 at 70867. ("Regulation ATS Adopting Release")

can calculate reliable trading volume statistics for individual ATSs, and ascertain the venue for each execution.

While it is true that it is not possible for the public to reliably identify the volume of executions in particular stocks on individual ATSs. As the Commission recognizes, market participants may seek off exchange liquidity. To the extent that individuals, institutions and other market participants choose to access “dark” liquidity, there should remain a measure of anonymity post trade. To the extent that they elect not to place their orders in the consolidated quote stream, but seek anonymity through some alternative liquidity provider, we believe they should be able to retain the identity of their chosen execution venue as proprietary information.

Real time disclosure of off-exchange trading venues can provide information to market participants seeking to take advantage of block-order information of institutional investors. Institutional investors, who execute large orders in ATSs in an effort to minimize the impact of information leakage, are concerned that identification of the trading venue to the public in real time will enable others to obtain a free ride by trading ahead. We believe that any possible gain to investors of immediate disclosure of the post trade location would be far outweighed by the potential harm we anticipate from aggressive trading types who could use this information to the detriment of large institutional investors. As the Commission recognizes, it is often difficult in the current trading environment for block orders to be executed. Immediate public disclosure of non-exchange venues will only make it harder and more costly to execute block orders. And although the block exemption goes some way toward protecting block orders, complete protection is not provided to the extent that many large block orders are broken into smaller orders for execution purposes.

In determining the advisability of real time post trade identification of trading venue the SEC should consider who will stand to benefit and who will be potentially harmed by information leakage due to disclosure. We question what value real-time identification of the specific ATS where an execution took place has for the investing public. Knowing where a trade was executed, but not being able access those shares is of little to no real value, except to those who seek to exploit that information.

If it is the Commission’s goal to make ATSs more like exchanges, then we propose that rather than require post trade public disclosure of ATS venues, the Commission permit exchanges to display post trade time and sales without attribution to the specific exchange if they so choose. The choice would then be upon the exchange or its customer to identify itself to the tape.[6] Certainly some will see a benefit to post trade identification. Those who believe that liquidity begets liquidity may elect to disclose their identity to the public. Others will choose not to display their identity on the post trade tape. Decisions of execution venues will be driven by their individual business models and the needs of their clients. Nevertheless, the Commission, FINRA and any other relevant regulator would have the information necessary to accurately track volume for each execution venue.

Despite our belief that the above suggested solution would cause no harm, we think it appropriate to address the Commission’s request for comments “on the timing and level of detail that ATSs should be required to provide about their trading activity” To the extent that the Commission requires the dissemination of post trade identifiers to the public, we believe that end of day public disclosure of trading venues on a cumulative basis would better balance the need for anonymity with the perceived public desire for information. We note, however, that some institutions have expressed concern that even end of day disclosure could negatively impact the execution of those block orders that execute over the course of several days. These institutions would prefer that information about specific trading venues be made available to the public on a weekly basis.

[6] Support for voluntary disclosure by OTC market centers can be found in FINRA’s recent rule filing, File No. SR-FINRA –2010- 001. SEC Release 34-61361 (January 14, 2010).

We hope that public discussions of “dark” liquidity will lead to greater understanding of its role in the markets and thank the Commission for considering our comments. We ask that the Commission carefully consider the potential impact and unintended consequences of the proposed regulations and ensure that prior to adoption of any specific proposal there is sufficient data to support the need for, and benefit of, the regulation.

Members of the ***STANY*** Board of Directors, and the ***STANY*** Trading Issues Committee would be happy to discuss our comments with the Commission. Please do not hesitate to call on us with any questions.

Respectfully submitted,

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