

February 22, 2010

**Via Electronic Mail (rule-comments@sec.gov)**

U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
Attention: Ms. Elizabeth M. Murphy, Secretary

**Re: SEC Release No. 34-60997; File No. S7-27-09**

Ladies and Gentlemen:

We are writing to provide comments on the Securities and Exchange Commission's (the "Commission") proposed amendments to Regulation ATS under the Securities Exchange Act of 1934 (the "Exchange Act") that apply to non-public trading interest in National Market System ("NMS") stocks, as set forth in the above-captioned release (the "Proposed Amendments"). The Proposed Amendments would affect the display obligations of alternative trading systems ("ATSs"), including a substantial lowering of the trading volume threshold that triggers the public display obligations for ATSs. We support lowering the volume threshold for purposes of increasing public display quotations and suggest that the Commission consider removing this threshold entirely. We believe, however, that the Proposed Amendments should also include a corresponding decrease in the threshold percentages of the fair access provisions set forth in Regulation NMS. We support the Proposed Amendments that would implement block trading exemptions for orders greater than \$200,000 in value. We also offer some suggestions on additional measures the Commission may wish to consider to increase transparency and liquidity.

Currently, Regulation ATS mandates order display requirements for ATSs that, in pertinent part, have "an average trading volume of 5 percent or more of the aggregate average daily share volume for [an] NMS stock as reported by an effective transaction reporting plan."<sup>1</sup>

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<sup>1</sup> 17 CFR 242.301(b)(3)(i)(A).

An ATS that meets this volume threshold is required to comply with the display obligations of Rule 301(b)(3)(ii).<sup>2</sup> The Proposed Amendments would lower the average daily volume threshold that triggers this order display requirements from five percent to 0.25 percent. We fully support the Commission's proposal to lower the volume threshold and agree with the Commission that this change will "further integrate the best-priced orders available on ATSs into the national market system."<sup>3</sup> Not only do we support lowering the display requirement, we recommend that the Commission consider removing the volume threshold entirely so that all ATSs would be required to display every quote, order and report on a real-time basis. We understand that the Commission previously considered this and found that this would "effectively requir[e] that any order communicated by an ATS to more than one person be made available to the market as a whole,"<sup>4</sup> but we respectfully recommend that the Commission move toward not having any threshold at all.

The Proposed Amendments leave unchanged the five percent average daily volume threshold that triggers the fair access obligations in Regulation ATS.<sup>5</sup> Under these provisions, an ATS that has five percent or more of the average daily volume with respect to an NMS stock must establish written standards for granting access to trading on its system and may not unreasonably prohibit or limit any person in respect to access to services offered by such ATS by applying such written standards in an unfair or discriminatory manner.<sup>6</sup> While increased integration of best-priced orders into the national market system is an important goal, its effects may be muted if an ATS is not required to provide corresponding access to trading on its systems for such securities that would qualify under the reduced volume threshold. We suggest, therefore, that the Commission include in the Proposed Amendments similar amendments that would lower the average daily volume threshold set forth in Rule 301(b)(5)(1)(A) from five percent to 0.25 percent as well and, if the Commission reduces the display threshold further, that it extend an equal reduction to access.

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<sup>2</sup> 17 CFR 242.301(b)(3)(i). Rule 301(b)(3)(ii) states that such ATSs meeting the volume threshold must provide to a national securities exchange or national securities association the prices and sizes of orders at the highest buy price and lowest sell price for such NMS stock.

<sup>3</sup> Proposed Amendments at p. 22.

<sup>4</sup> *Id.* at p. 29.

<sup>5</sup> 17 CFR 242.301(b)(5)(i)(A).

<sup>6</sup> 17 CFR 242.301(b)(5)(ii)(A)-(B). This "fair access" standard also applies to ATSs that have 5 percent or more of the average daily trading volume with respect to (1) an NMS security that is not an NMS stock and for which transactions are reported to a self-regulatory organization, (2) municipal securities traded in the United States or (3) corporate debt securities traded in the United States. 17 CFR 242.301(b)(5)(i)(B)-(D).

We support the Commission's proposals to amend Rule 301(b)(3)(ii) to exclude "orders having a market value of at least \$200,000 that are displayed only to those who are reasonably believed to represent current contra-side trading interest of at least \$200,000" and Rule 600(b)(8) by limiting the exclusion of IOIs to those "that are not actionable and indications of interest for a quantity of NMS stock having a market value of at least \$200,000." The Commission may also wish to provide certain flexibility by accounting for average notional volumes traded on any given day in order to accommodate less liquid securities.

We also respectfully suggest that, to restore transparency and liquidity to pre-decimal trading levels, the Commission should mandate display of all customer limit orders for a minimum of five levels deep and that limit order trade-through protection should be extended accordingly. Right now, once the top-of-book in the NMS is cleared, internalizers are free to trade-through public displayed liquidity below top-of-book and that leads to unnecessary and inappropriate market fragmentation. We also ask the Commission to resist any calls to rescind prohibitions on sub-penny quotations. Allowing sub-penny quotations would further diminish the value of the "top of book" quotations, which would not in our judgment be in the public interest.

We would be pleased to discuss these matters further with the Commissioners or the Staff, respond to any questions that you may have, or provide any additional comments or information that you may request.

Respectfully submitted,

*Kim Bang* by R..D.B.