AQUA

February 25, 2010

By Electronic Mail (rule-comments@sec.gov)

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

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

Dear Ms. Murphy:

AQUA welcomes the opportunity to comment on the Securities and Exchange Commission's (the "**Commission**") rule proposal on the Regulation of Non-Public Trading Interest (the "**Proposal**"). We appreciate the Commission's stated intention, to promote the Securities and Exchange Act of 1934 goals of transparency, fairness and efficiency.

Aqua Securities LLC is a registered broker-dealer with the Commission and FINRA and operates an alternative trading system ("**ATS**") called AQUA, in compliance with Regulation ATS. AQUA facilitates anonymous block transactions between broker-dealers and institutions, typically in stocks that are difficult to trade. We have been in operation as an ATS since 2008.

The Commission has proposed to add information to the post-trade reporting requirement that would apply to transactions effected in an ATS. Specifically, the Commission Proposal would require the executing ATS to be identified in real-time as part of the normal trade-reporting process. Currently such transactions are reported publicly in real-time but without including the identity of the ATS.

The Commission has included an exemption for large orders, defined as those orders with quantities of NMS stock with market values of at least $200,000.

The need for the identity of an executing ATS to be revealed in real-time or otherwise is not evident to us. An ATS trade effected by or on behalf of an institutional client typically reflects a larger execution strategy that is not yet complete. The ticker, size, price and time of all ATS transactions are already reported to the tape in real-time. **We believe that the further identification of the executing ATS, in real-time or otherwise, risks harm to the remaining interest that has not yet traded.** For this reason AQUA does not claim credit for any of the trades it reports to the consolidated tape and publishes no volume statistics.

We urge the Commission to consider alternatives to real-time ATS identification that protect the remaining trading interests of these clients.

As a system devoted to facilitating large trades, we note that the Commission's proposed exemptions for large orders have the potential to mitigate any harm AQUA participants might suffer as a result of these proposals.

However, large orders risk harm from public disclosure not because they are large in an absolute sense but rather because they are large relative to the volume of a stock that is ordinarily available to trade. Thus the threshold of any exemption ought to be related in some way to the volume of a stock that is ordinarily available to trade. A single standard that applies equally to all stocks across-the-board does not suffice.

For example, in response to demand from our clients AQUA has employed four distinct definitions of the term "block," dependent on classification of securities by market capitalization: 1) micro-cap; 2) small-cap; 3) mid-cap; and 4) large-cap stocks. (Stocks with the smallest market capitalizations tend to have less trading volume; stocks with larger market capitalizations tend to have more.) Based on our experience in trading blocks, we believe the Commission's proposal of a $200,000 exemption across-the-board is likely to prove too high for low-volume stocks.[1]

[1] AQUA does not accept order submissions of less than block size. AQUA defines a micro-cap stock as one with a market capitalization under $250 million. AQUA defines block size for microcap stocks as 2,500 shares or greater. Small-cap stocks have market capitalizations between $250 million and $1 billion. Block size for small-caps is 5,000 shares or greater. Mid-cap stocks have market capitalizations between $1 billion and $5 billion. Block size for mid-caps is 10,000 shares or greater. Large-cap stocks have market capitalizations of greater than $5 billion. Block size for large-caps is 50,000 shares or greater. AQUA uses the previous day's closing trading prices to calculate market capitalizations.

An exemption for orders that are greater than 1% of a stock's recent average daily volume seems reasonable to us.

Finally, as a technical matter we believe the exemption should be crafted in such a way as to avoid unnecessary intraday price calculations. To meet a market value standard such as the Commission has proposed, every affected system would be obliged to make continuous and instantaneous market value calculations for every order and trade. A standard based on average daily volume would obviate this need.

Again, AQUA appreciates this opportunity to express our views on the Proposing Release. If you have any comments or questions regarding this letter, please do not hesitate to contact me at 212 821 1101.

Sincerely,

/s/ Kevin Foley

Kevin Foley
President and CEO
AQUA

cc: Hon. Mary Schapiro, Chairman
Hon. Luis A. Aguilar, Commissioner
Hon. Kathleen L. Casey, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Elisse B. Walter, Commissioner

Robert W. Cook, Director, Trading and Markets
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