

**VIA EMAIL AND FEDERAL EXPRESS**

November 15, 2013

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

Re: Proposed Rule Change to Require Alternative Trading Systems to Report  
Volume Information to FINRA and Use Unique Market Participant Identifiers.  
File No. SR-FINRA-2013-042

Dear Ms. Murphy:

NYSE Euronext (NYSE) appreciates the opportunity to comment on FINRA's recent proposal to require Alternative Trading Systems (ATSs) to disclose aggregate weekly volume information and number of trades by security on a delayed basis. While any additional information about the trading in an ATS is a step in the right direction, the proposal falls far short of providing regulators and investors with meaningful information. Non-exchange trading has grown significantly in recent years and as the Chairman of the SEC noted in a recent speech,<sup>1</sup> much of the non-exchange activity is retail and institutional in nature, yet the transparency of information related to this trading activity remains very limited. For these reasons, we believe that including the entire universe of non-exchange trading is important because while ATSs make up approximately 14% of volume, other dark trading venues account for over 22% of volume and receive a significant portion of the retail order flow in the market.<sup>2</sup>

NYSE believes this proposal could be significantly improved by requiring that all trading venues provide investors and the public with basic information in the following two areas:

- (1) **Trade execution data** – Trade-by-trade execution data (including stock price, share quantity, time of execution) provides valuable information to investors to measure the performance of a given trading venue, including the frequency, amount of price improvement and trade sizes. In November 2009, the SEC highlighted the need for greater ATS transparency in Regulation of Non-Public Trading Interest, which proposed a requirement that trade reports on the consolidated tape data stream include a unique identifier for ATS transactions.<sup>3</sup> Since the time

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<sup>1</sup> <http://www.sec.gov/News/Speech/Detail/Speech/1370539857459>

<sup>2</sup> Dark pool data has increased from 4.5% in January 2008 to 14.3% as of August 2013, Rosenblatt Securities "Let There Be Light", September 25, 2013. Total non-exchange trading in August 2013 was 36.6% based on CTA/UTP data, therefore, we estimate that internalization was 22.3%.

<sup>3</sup> <http://www.sec.gov/rules/proposed/2009/34-60997.pdf>

of the SEC release, ATS activity has increased significantly, but ATS disclosure requirements have not changed and remain minimal. While exchanges are required to make available real-time individual trade execution data, ATSs only provide data on an aggregated basis across all non-exchange venues. Because non-exchange venues currently report trades to the FINRA Trade Reporting Facilities, we believe requiring ATSs and other non-exchange venues to submit individual trade data would not be a cost or administrative burden to them. NYSE also believes delayed end-of-month public trade-by-trade reporting for each non-exchange venue would be sufficient and address information leakage concerns.

- (2) **Trading operations** – All trading venues, including ATSs, internalizers and exchanges, should provide basic information on trading rules, order types and pricing structures. For example, a newly launched ATS, IEX, which is owned by a consortium of institutional investors, makes such information available to the public by posting its Form ATS on its website.<sup>4</sup> This information is important to who want to understand how their orders interact in the marketplace. Requests for this type of information have come from many segments of the market, including institutional investors and asset managers. In fact, the CFA Institute, which represents financial analysts and asset managers, recommended in a white paper on equity market structure and non-exchange trading that “Dark trading facilities should, therefore, voluntarily reveal greater information about their operating mechanics and report more information on the volumes they execute.”<sup>5</sup> Bloomberg Tradebook, which operates an ATSs, submitted a comment letter to the SEC outlining a list of questions that asset managers would like ATSs and exchanges to answer on a periodic basis (Appendix A).<sup>6</sup> And lastly, a Morgan Stanley presentation to the SEC also highlighted a sample of customer questions received by dark pool operators, including items such as trading priority, order flow tagging, IOI use and opting out of trading with certain order flow.<sup>7</sup>

In summary, requiring all trading venues to make information available in these two areas would allow investors to better understand the benefits and drawbacks of each venue and make apples-to-apples comparisons using standardized reporting. It would significantly contribute to building trust and confidence in a marketplace that is becoming more opaque. And, greater disclosure would enhance the SEC’s latest effort to provide more sources of information to help inform the broader market structure debate from a regulatory and market quality perspective. FINRA has ready access to important sources

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<sup>4</sup> <https://s3.amazonaws.com/iextrading/docs/Form+ATS-Redacted.pdf>

<sup>5</sup> CFA Institute. Dark Pools, Internalization, and Equity Market Quality. <http://www.cfainstitute.org/learning/products/publications/ccb/Pages/ccb.v2012.n5.1.aspx>

<sup>6</sup> See Comments to the Concept Release on Equity Market Structure; Securities and Exchange Act Release No. 34-61358. <http://www.sec.gov/comments/s7-02-10/s70210-406.pdf>

<sup>7</sup> Morgan Stanley, Securities and Exchange Commission: Discussion of Order Handling Practices & Disclosures 5-6 (March 4, 2011) (hereinafter Morgan Stanley SEC Presentation), available at: <http://www.sec.gov/comments/s7-02-10/s70210-328.pdf>

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of data to improve transparency and help inform the market structure discussion and we believe that this proposal is overly accommodating and puts interests of brokers over the interests of investors.

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We appreciate the opportunity to provide our views on this proposal and look forward to discussing these issues with you further.

Sincerely,

A handwritten signature in blue ink that reads "Janet McInnes". The signature is written in a cursive, flowing style.

## Appendix A

### Standardized List of Questions for ATSs and Exchanges

<b>Affiliations</b>
1. Does the exchange   A TS have any affiliates?
2. Does the exchange   ATS or affiliate(s) act as principal to transactions on the exchange   ATS (e.g., Pipeline)?
3. Does the exchange   ATS or affiliate(s) act as riskless principal (universal counterparty) to transactions on the exchange   ATS?
4. Does the exchange   ATS or affiliate(s) effect trades in a proprietary capacity?
5. During the prior calendar quarter, what were the exchange   ATS's or affiliate(s)' riskless principal trades as a percentage of all trades on the exchange during such quarter? Measured by dollar volume what percentage of all trades were riskless principal trades effected by the exchange   ATS as a universal counterparty?
<b>Order Information Handling</b>
6. Does the exchange   A TS share orders   order information with any affiliate or another Exchange   ATS? (e .g. , Level)
7. Is the sharing in the form of a conditional order or actionable 101?
8. Is the sharing in the form of a "last look" 101?
9. Is the sharing of the order /order information automatic?
10. Is the sharing of the order /order information directed by the entity that submitted the original order?
11. Does the exchange   ATS or affiliate(s) receive compensation for order flow   transmission of the order handling information?
12. Does the exchange / ATS or affiliates(s) operate a Smart Order Router (SOR)? Does the SOR preference the exchange / ATs or affiliate(s)?
<b>Matching methodology</b>
13. Is price/time priority the matching methodology?
14. Is there any matching logic that preferences certain customers?
15. Are there any order types that enable customers to gain preference in the queue?
16. Are there any special fees or rebates which lead to a preference of one order over another?
17. Does the exchange / ATS engage in any independent their-party audit to validate the claims in the overview?

Source: Bloomberg Tradebook LLC, <http://www.sec.gov/comments/s7-02-10/s70210-406.pdf>