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Automated Trading Desk, LLC

May 30, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: Securities and Exchange Commission Release No. 34-53742; File No. SR-NSCC-2006-04

Dear Ms. Morris:

Automated Trading Desk, LLC ("ATD")[1] appreciates this opportunity to submit its view on the above-referenced National Securities Clearing Corporation ("NSCC") proposal to the Securities and Exchange Commission ("SEC").

Anti-competitive Affect

In 1997, recognizing the need to modernize the marketplace, the SEC adopted the Order Handling Rules. As a direct result of these rules, Alternative Trading Systems ("ATS") and Electronic Communication Networks ("ECN") began to proliferate. The speed and certainty of execution that they brought to the marketplace quickly helped narrow spreads and provided significant benefit to the investing public. The ECN business model today is exemplified by providing fast and certain executions at the lowest transaction cost possible.

The ECN landscape was then, and continues to be, extremely competitive. With price competition driving ECN profitability to the third or fourth decimal place, every mechanism to control costs must be employed to remain at the vanguard. Two primary mechanisms by which ECNs lower their clearing costs are 1) becoming an exchange (or closely related to one) and participating in the Regional trade Interface Operations (RIO) system[2] or 2) compressing[3] trades to reduce the number of cleared transactions. Most of

[1] ATD is a technology firm that develops software and systems for the use of its brokerage subsidiaries to trade NASDAQ and listed equities on an automated basis. Since 1994, ATD has traded on its own behalf and for institutional clients through Automated Trading Desk Brokerage Services, LLC ("ATDB"). Since 2003, ATD has provided execution services for a broad spectrum of retail order sending firms through Automated Trading Desk Financial Services, LLC ("AUTO"). In April of 2006, ATD accounted for approximately 5.3% of all NASDAQ volume, 5.5% of all NYSE volume, and 8.5% of all AMEX volume.

[2] A non-exchange related ECN reports itself as the contra-party to every transaction matched on that ECN. In contrast, exchanges and their related ECNs can remove themselves from the clearing process by explicitly reporting the contra-parties to both sides of the transaction through the RIO system, thereby disintermediating themselves from the cost of clearing associated with those transactions.

[3] This is the practice of combining trades on the same side of the market into a single buy ticket and a single sell ticket. This is in contrast to the practice of pre-netting which combines buys and sells into a single ticket.

the ECNs (INET, BRUT, BATS, BTRD, etc.) chose the second route to reduce clearing costs.

The impact of this proposal on non-exchange related ECNs is one of the most critical issues. If market participants are unable to compete on a level playing field, there will be substantially less competition. ATD believes ECN-driven competition is a key factor in making the marketplace more efficient. Obviously, competition in the marketplace results in tremendous savings to the investing public.

Therefore, the question must be asked: which parties stand to benefit and which stand to lose if this anti-competitive move is approved?

The NSCC is owned by the Depository Trust and Clearing Corporation ("DTCC"). Until recently[4], the NYSE and the NASD were the only owners of preferred stock in DTCC, allowing each of them to appoint a member to the DTCC Board of Directors. Moreover, the NYSE owned approximately 29% of the common shares of DTCC (and AMEX and the NASD each own about 3.7% of the common shares). At the time, the NYSE was by far the single largest shareholder of the DTCC. As part of the recent NYSE Group transaction, the NYSE Group divested itself of its direct ownership in DTCC. However, the NYSE Group remains represented on the board of the DTCC. ATD understands the NYSE Group was instrumental in advancing this proposal.

Obviously, the exchanges (and their related ECNs) will receive an enormous windfall as a result of this anti-competitive proposal by the NSCC. The non-exchange related ECNs are likely to be squeezed out of the marketplace, while both trading and clearing costs for other market participants will increase. As a result, spreads will widen to the detriment of the investing public.[5]

Although the NSCC touts its proposed changes as revenue neutral[6], that analysis is only from the perspective of monies coming into the NSCC. This analysis ignores the disparate impact on market participants, glossing over the benefits to the exchanges and their ECNs and disregarding the additional costs to the non-exchange ECNs. Clearly, the NSCC does not consider the industry at large.

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[4] Please see, NSCC's Important Notice dated January 3, 2006 available at (http://www.nscc.com/impnot/notices/notice2006/a6184.pdf). The ownership percentages are all cited in that Notice.

[5] At the same time, it is interesting to note that the DTCC paid $420,192,000 in employee compensation and related benefits in 2005 on net revenues of $751,229,000. DTCC's total liability for pension and other plans totaled $581,402,000 in 2005. In 2006, the DTCC expects to add another $25 million to its pension plans, and an additional $3.3 million to its retiree medical plan. See DTCC 2005 Annual Report. (http://www.dtcc.com/AboutUs/2005annual/dtcc2005_annual.pdf).

[6] The NSCC is unwilling to share these studies with industry participants or even their own members (except to the limited extent that the NSCC will show their members how the NSCC believes the changes will affect the individual member firm.) In discussions with the NSCC, ATD requested "sanitized" versions of these studies in order to be able to review the underlying assumptions. Our request was flatly denied. We believe it is critically important the SEC obtain these studies in order to perform their own review of the validity of the underlying assumptions.

Moreover, the NSCC is attempting to eliminate trade compression through anti-competitive fee structures. In its filing, the NSCC proposes the addition of new "Value into-the-net" and "Value out-the-net" fees. These new fees add charges based on the value of shares which net together (Value into-the-net) and for the value of shares which do not net together (Value out-the-net). These new fees go hand-in-hand with the NSCC's stated goal of eliminating compression. By changing its fee schedule from a transaction based model to a transaction plus value-traded model, the NSCC is seeking to create a further disincentive to compression. The by-product of this monopolistic behavior is to eliminate healthy competition in the market, to the detriment of the investing public. In other words, the NSCC is attempting to eliminate trade compression both directly with the proposal and indirectly through unfair and anti-competitive fee structures.

Given the limited information provided, ATD has been unable to calculate whether the new fees are, in fact, revenue neutral. Even if they are, it is apparent that the cost effects downstream are not being considered. ATD respectfully submits that the SEC should evaluate this proposal with these considerations in mind.

Fragmentation

ATD further expects this proposal to drive the industry to find other solutions to the NSCC. Over the past several years, the NSCC gradually and intentionally became a monopoly. Although fragmentation of the equities markets was a challenge, ATD believes it resulted in a net benefit to the investing public. Perhaps a revitalized competitor to the NSCC would allow the same innovation in the clearing business, deriving additional benefits for the public investor. The markets should enthusiastically support such an enterprise. In true monopolistic fashion, the NSCC's current proposal shows no regard for the concerns of the trading community.

Additionally, the industry will take action to alleviate the effect of this proposal. In its filing, the NSCC specifically exempts trades "internalized" within a clearing firm or its correspondents. A likely result of this "exemption" will be that all large participants will form clearing arrangements with all large clearing firms. All trading within each clearing firm will then be compressed and/or netted prior to reporting to the NSCC. Massive fragmentation of the clearing arrangements on the street is not an intended consequence of the NSCC's proposal.[7] However, this is the likely result.

[7] This is especially true considering the additional difficulty in monitoring risk that such fragmentation could cause in the industry.

Integration Issues

Further, this proposal comes at a time when the industry is struggling to prepare for Regulation National Market System ("Reg NMS"). The NSCC did very little to estimate the cost to industry participants.[8] Hundreds of firms will be forced to alter their current clearing methods in an effort to upload all of their executions in real-time to their clearing firms. Every clearing firm will be forced to create protocols for receipt of this information which must then be passed on to the NSCC. This is no small matter and will be a significant burden to our industry.

NSCC's Purported Rationale

In recent years, the NSCC has vocally expressed its opposition to the practice of trade compression.[9] Finding little support among its membership or the trading community as a whole, the NSCC is employing new tactics in its latest rule filing. In the filing, the NSCC has advanced four conclusory justifications as to why eliminating compression may reduce risk: business continuity, straight through processing, risk mitigation, and trade reconciliation. However, the NSCC's support for these arguments is, at best, sketchy. In each case, the NSCC proposal is a solution in search of a problem.

Business Continuity Risk

The so-called "9/11 risk" is that "without real-time submission, should an event occur after trade execution that disrupts trade input, submission of trade data could be significantly delayed or trade data could be lost." Of course, while this view might have been accurate shortly after 9/11, the NSCC blatantly ignores recent developments by the trading industry to enhance disaster recovery systems. For the failure envisioned by the NSCC to occur, both parties to a trade would have to lose their data. Moreover, this data is also captured through trade reporting systems such as NASD's Automated Confirmation Transaction ("ACT") service and the exchange trade reports. In the event of a disaster, these alternative sources of data could be used to obtain certainty in clearing these obligations. Although the NSCC's proposal might be a small additional safeguard, this can be achieved without the NSCC eliminating compression. The NSCC chooses to ignore that firms could upload trades in real-time to the NSCC while also compressing those same transactions for clearing. It is understood in the industry that the Options Clearing Corporation accepts real-time trade submissions and runs its risk reviews while allowing forms of trade netting and compression. In its zeal to do away with

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[8] ATD acknowledges that the NSCC recently changed its proposed implementation schedule for this filing. However, if approved, any such schedule must be reviewed in light of other industry efforts to implement Reg NMS, OATS Phase III, NASDAQ's Exchange status, etc. These important industry and regulatory efforts should be given precedence over the NSCC's attempt to change a long-standing industry practice for little practical benefit.

[9] See "Managing Risk in Today's Equity Market: A White Paper on New Trade Submission Safeguards", DTCC, February 28, 2003 (http://www.dtcc.com/ThoughtLeadership/whitepapers/managingrisk.pdf).

compression, the NSCC has attempted to obfuscate the fact that compression is not a pre-requisite of real-time submission.[10]

Moreover, it would appear that the NSCC is not entirely consistent regarding the extent of the 9/11 risk to the financial industry. In September of 2005, Donald F. Donahue, Chief Operating Officer of The Depository Trust & Clearing Corporation ("DTCC"), and President and COO the National Securities Clearing Corporation[11], testified before the U.S. House of Representatives. After discussing industry efforts to respond to the events of 9/11, Donahue stated:

> These efforts have been a major focus of attention for all of these organizations over the past years, and have improved what was already a very high level of resilience in the financial service industry's infrastructure. The sector is to the point where I am very confident of our ability to operate with minimal disruption even under very severe circumstances.

Obviously, if the markets already operate with a "very high level of resilience," the proposed elimination of clearing compression would be of very little added benefit.

Straight Through Processing

The NSCC states that "real-time trade submission promotes straight through processing and will support the movement by the securities industry to shortened settlement cycles." While true, this is completely superfluous. As noted in the DTCC's 2004 Annual Report, the "move to a short settlement cycle has been put on hold." The current three-day clearing system works incredibly well, and ATD is unaware of any problems that could be avoided by a one-day settlement system. There has been no clamoring for one-day clearing.

Risk Mitigation

With real-time trade submission, the NSCC Risk Management staff could evaluate its member's market risks more quickly. This may be true, but it again assumes that compression must be eliminated to achieve real-time submissions. This is clearly false. Real-time submissions could be made without elimination of compression in order to achieve this goal. It also appears that the NSCC has systems in place (such as the Inventory Management System) which accept trade information prior to settlement processing. The NSCC clearly has the ability to handle this type of data without processing it. Their unwillingness to accept real-time submission of data for other purposes is simply unacceptable.

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[10] In fact, in discussions with the NSCC on May 25, 2006, they stated that they were not interested in receiving real-time data unless trade compression was also eliminated. (Telephone conference with, inter alia, Tom McCarthy, Tom Costas and Merrie Witkin at NSCC).

[11] In his role as Chairman of the Financial Services Sector Coordinating Council for Critical Infrastructure Protection and Homeland Security. See http://reform.house.gov/UploadedFiles/Donahue_Testimony.pdf.

Trade Reconciliation

The NSCC claims that intraday reconciliation could be achieved if real-time submission was achieved. This is completely absurd. If the industry is not prepared to shorten the three-day settlement process, it is hard to believe that there is a need to achieve intraday reconciliation. This might be a “nice-to-have” item, but there is hardly a cry from the industry to make this occur.

Conclusion

The NSCC filing, evaluated alongside our discussions with NSCC staff, leads to but one alarming conclusion: the NSCC has not considered the effects of this proposal beyond its own very limited sphere. We believe that the SEC must take this opportunity to review the larger picture in this “fee filing.”

The DTCC and its subsidiary, the NSCC, are monopolistic entities. Therefore, it is imperative that its proposed filings be reviewed with a critical eye. The NSCC has historically been opposed to trade compression. When unable to gain industry support for the elimination of trade compression, the NSCC began the process of creating rationalizations to justify its position. However, even a cursory review of its arguments shows they lack merit.

Unfortunately, any investigation into the inner workings of the NSCC is stymied by its lack of transparency. The NSCC’s outright refusal to share information cited in its proposal casts doubt not only on the validity of their analyses but also the motives underlying them.

In its 2005 annual report, the DTCC (which owns the NSCC) states that its purpose is “to help grow the world economy by furthering the developing of low-cost, efficient capital.” The effect of this proposal would be to undermine this stated goal. Whether through the elimination of competition, increased trading costs, or wider spreads, the effective cost of capital will increase. For these reasons, ATD respectively requests the SEC reject the NSCC proposal.

ATD appreciates the opportunity to express its views regarding the NSCC’s attempt to eliminate trade compression, and we would be happy to discuss these matters at your convenience.

Sincerely,

Steve Swanson

Steve Swanson
CEO & President
Automated Trading Desk, LLC