

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

Dear Ms. Murphy,

Themis Trading appreciates the opportunity to comment briefly on NYSE Euronext's Retail Liquidity Pilot Program, as filed here: [as filed here, dated October 14th 2011](#).

We would like to point out a few past NYSE's comment letters where they made comments concerning off-exchange volume and price discovery. [In a comment letter](#) to the SEC on the SEC Concept Release dated April 23, 2010, NYSE stated:

*"When information concerning trading interest is excluded from the public quote stream, the quality of the price discovery process can be affected...Dark pools and other off-exchange trading venues are attracting a significant volume of advantageous marketable order flow away from displayed markets and exchanges, thus increasing the toxicity of order flow on Exchanges. The continued fracturing of liquidity has the potential to further limit order interaction, decrease liquidity, increase short-term volatility, and compromise the quality of the price discovery process."*

In another comment letter dated December 15<sup>th</sup> 2010, [in which they object to Direct Edge's use of step-up flash type orders](#). NYSE states:

*"Separately, we reiterate our concerns about the broader growth trend for liquidity that does not participate in the price discovery process, of which flash orders are a component. Over the past four years, there has been a dramatic increase in the level of activity that is reported to the FINRA Trade Reporting Facility (TRF) almost tripling in some cases, with absolute values in excess of 40% in many small-cap names...In addition to concerns about when these increasing levels begin to impact the price discovery process, the increased TRF volume raises concerns about the toxicity levels on the public markets as increasing levels of attractive flows are skimmed from the public markets"*

In addition to these comment letters, NYSE [also made comments](#) at the SEC Market Structure Roundtable on June 2, 2010:

*"We must consider the toxicity levels on exchanges as we continue to filter increasing levels of order flow before accessing public markets, disadvantaging displayed limit orders, the very orders we claim to want to encourage...We should make sure that volume isn't migrating to the dark for unfair structural reasons or regulatory arbitrage. Existing practices, such as subpenny*

*price improvement should be examined to see whether they violate the spirit if not the specifics of existing regulation.”*

It would appear that NYSE Euronext’s views within the last year concerning *what is good for price discovery, markets, and long term investors* have morphed.

With this in mind, we respectfully suggest that the SEC should view expert testimony from for-profit industry participants with a certain dose of skepticism, and rely on that testimony accordingly, as it ponders market structure regulation in general, and its effects on long term investors and the capital formation process.

Thank you for allowing us to comment.

Sal Arnuk, Joe Saluzzi, Paul Zajac

Themis Trading LLC

October, 17<sup>th</sup>, 2011