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April 26, 2012

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

Re: Securities Exchange Act Release No. 34-66346 (File Nos. SR-NYSE-2011-55 and SR-NYSE Amex -2011-84); Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Changes, as Modified by Amendments No. 1, Adopting NYSE Rule 107C to Establish a Retail Liquidity Program for NYSE-Listed Securities and NYSE Amex Rule 107C to Establish a Retail Liquidity Program for Amex Equities Traded Securities.

Dear Ms. Murphy:

The Security Traders Association (“STA”) appreciates this opportunity to submit comments in regards to the above-referenced New York Stock Exchange (“NYSE”) proposal to establish a Retail Liquidity Program (“RLP” or “Program”) filed with the Securities and Exchange Commission (original Oct. 19, 2011), the concurrently filed request for exemptive relief to Rule 612 (c) of Regulation NMS (“Exemptive Request”), the responsive comment letter submitted by the NYSE on January 3, 2012 (“NYSE Letter”) and the SEC Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Changes. In addition, the STA will offer its comments on the rulemaking process in the equities and listed options markets, as well as views on the overall experience retail investors have in today’s markets.

The Security Traders Association was formed in 1934 and is an organization comprised of individuals who are involved in the trading of financial securities. Through the diversity of our membership and committee structures, comment letters like this one are a culmination of input received from a wide range of market participants.

Retail Investor Experience

Retail investors who would qualify for the Program have been and continue to be served by a competitive environment. When directly interacting with the market, their experience can be characterized as consistent and affordable. While the Program seeks to provide an investing alternative for retail investors who interact directly with the market, the characteristics of a Retail Liquidity Identifier, “RLI” indicators and a Dutch auction process, could bring a layer of complexity and inconsistency to the experience these investors have today. This in turn could potentially hurt investor confidence with little additional benefit.

Rulemaking Process

Rule changes regarding how transactions occur in equities and listed options are introduced into the market either through an individual SRO rule proposal or regulatory mandate. While there are similarities in these processes, the decision as to which procedure should apply for a particular situation is an area of debate among market participants.



Regardless of which approach is taken, the STA has long held the position that by following certain basic principles for rulemaking, the promise of the National Market System (“NMS”) to benefit all investors will be fulfilled. These principles include:

- The observance of due process in rulemaking.
- The use of empirical data in the rulemaking process.
- Regulations should not favor any one business model or platform.
- Changes to market structure need to be thoughtful, comprehensive, take into consideration other financial markets, and be implemented incrementally.
- Market structure initiatives should insure that the benefits of competition accrue to investors, through the appropriate balance of competition and regulation.

The STA acknowledges that a market participant’s right to compete is often exercised through an SRO rule filing on an innovative product or price offering. While there are efficiencies to this process, the perceived benefits of any SRO filing need to be considered against the greater good of overall market structure and investor confidence. We believe there are certain conflicts with the above mentioned principles and how the Program is being introduced into the market and the process by which it will be decided. These conflicts reside in two areas:

- The benefits of competition to the investors the Program seeks to attract are specious and potentially harms these same investors who use managed funds as their investment vehicle.
- The Program would lead to a major market structure event that warrants the full due diligence of SEC rulemaking.

The benefits of competition are questionable to the investors the Program seeks to attract and potentially harms these same investors who use managed funds as their investment vehicle.

The Program creates two new classes of market participants: (1) Retail Member Organizations (“RMOs”), which would be eligible to submit certain retail order flow (“Retail Orders”) to the Exchange, and (2) Retail Liquidity Providers (“RLPs”), which would be required to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the best protected bid or the best protected offer (PBBO) (“Retail Price Improvement Order” or “RPI”)

Individual investors execute their investment strategies by directly engaging the market as retail clients or through the use of managed funds. The Program, by its design, divides order flow into retail and non retail, creating a two tiered market. Furthermore, the treatment of the order flow by the Program’s definition of retail and non-retail would be discriminatory. The price improved liquidity, made available by the defined Retail Liquidity Providers, is only accessible to retail investors and not to institutional funds. This discriminatory behavior is of concern to the STA; and, in particular members, of our Institutional Committee who have retail clients as investors. Individual investors, or retail clients whose investment vehicle of choice is managed funds, would be disadvantaged since such funds are not classified as “RMOs.”



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The Program would lead to a major market structure event that warrants the full due diligence of SEC rulemaking.

It has often been the case that rules filed by one SRO, once approved by the SEC, have led to similar filings by competing SROs. Since the SEC has established precedent with an original approval of an initial filing, additional filings are often quickly approved. We would assume that an approval of the Program will lead to similar filings by other SROs. In that plausible scenario, we would have a major market structure event - one that includes sub-penny quoting and its implications on message traffic, market data charges, and overall market confidence.

We are concerned about the ability of market participants to absorb such a market changing event and the immediate multiplying effect that the Program could initiate. We believe an approval of the Program has a high probability of unintended consequences. Regulators and firms who are currently facing an extremely robust regulatory agenda may not have the resources necessary to react to unintended consequences. When measured against the lack of defined benefits to investors, the STA does not believe that any potential rewards to investors justify the risks to the overall functional stability of our markets.

Conclusion

Our financial markets serve a broad array of investors. Initiatives designed to enhance liquidity for any subsector of investors need to be considered in the broader context on how such initiatives impact the overall market structure. The Program raises a number of significant market structure issues and the STA respectfully submits that the disapproval of this rule may be appropriate. Last, STA believes the markets would be better served if the Program were considered either in unison or after, the studies required of the Securities and Exchange Commission under the recently signed JOBS Act. In particular, STA would encourage the sub penny characteristics of the Program be included in the required "Tick Increment" study."

Sincerely,

A handwritten signature in black ink that reads "James Toes".

Jim Toes
President & CEO
Security Traders Association

A handwritten signature in black ink that reads "J. G. Setzenfand".

Jennifer Green Setzenfand
Chairman
Security Traders Association