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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

File No. SR-NYSE-2013-21

Re: NYSE Rule 104 regarding DMM Access to Market Information

Dear Securities and Exchange Commission:

Here are my comments on the proposed changes to NYSE Rule 104:

In summary:

- This should be approved without delay as it might improve market quality for the institutional investors who trade on behalf of retail investors like me.
- Institutional investors now monitor execution quality very closely. If this proposal worsens execution quality, the NYSE will quickly lose market share.

[1] I am also an independent member of the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, the University of Pennsylvania, EDGX, EDGA, or anyone else for that matter.

- The SEC staff has more important things to work on, like JOBS Act implementation. Misallocating resources to minor issues like this continues to damage the SEC's credibility as an efficient steward of taxpayer dollars.
- Exchange and ATS regulation needs to be put on a level playing field.
- This proposed rule change is consistent with U.S. securities laws.

This should be approved right away as it could improve execution quality.

As one with an engineering background, I like cool technology and generally favor automating trading systems. But I also have human DNA and realize that there are still a few areas where we flesh and blood humanoids can add some value.

This proposal will permit the DMM to use the information within the NYSE's systems, such as who just sold or who has a big order, in order to help match buyers with sellers.[2] This is what the specialist could do in the old days and it worked. I saw it myself on a visit to the NYSE floor many years ago. When a floor broker approached the specialist about a large buy order, the specialist could tell the floor broker about another floor broker who might be a seller because of that potential seller's recent sales or because that broker had also indicated to the specialist it had a large sell order. The two brokers could then negotiate privately, or even contact their customers to bring in additional liquidity. In this way, they could trade a large block of stock without moving the price much. In other words, they could trade with minimal market impact.[3] The old floor seemed messy, but it worked. Indeed, for many years transactions costs studies showed that the NYSE experienced lower transactions costs than other fully automated markets like the Paris Bourse.[4]

It is no surprise that as the Hybrid Market and the New Market Model were rolled out, eliminating the ability of the DMM to provide this service, that block trading disappeared and average trade size fell. Institutions had little choice but to slice and dice their orders into small bits and drip them slowly into the market.

Bringing back this ability for the DMM to act as a match maker could improve execution quality, especially for large buy side institutions like mutual funds that trade on behalf retail investors like me. As

[2] The DMM is the Designated Market Maker. Before the Hybrid and New Market Models were rolled out, they were referred to as "specialists." DMMs do not work for the NYSE but work for independent firms. As the name DMM implies, they serve as a market maker in a particular stock. This means that they are always willing to "make a market" by buying when others want to sell or selling when others want to buy. They earn a living from the difference between the lower prices at which they buy and the higher prices at which they sell.

[3] See my comment letter on the original proposal, http://www.sec.gov/comments/sr-nyse-2011-56/nyse201156-5.pdf.

[4] For an example of such studies, see the Elkins McSherry data attached as an appendix.

users of the NYSE have the ability to opt out and not let the DMM peek at their orders, this is a no-lose proposition for customers at the NYSE. It gives NYSE customers a choice that might improve their execution quality. It might even work.

The SEC's disapproval of the original proposal stated:

"However, neither the SROs nor the commenters have offered any specific explanation, nor has the Commission been able to otherwise discern, how the provision of disaggregated pre-trade and post-trade information about public orders on the Exchange books, including the identity of the entering and clearing firms, would promote a legitimate Floor function."

My original comment letter attempted to provide just such a specific explanation. In it I stated:

"I personally witnessed the following example several years ago. I was visiting the NYSE floor and hanging out with a specialist and just watching the trading. A floor broker approached the specialist and indicated that he was working a large buy order. The specialist stated that there weren't many sell orders in the book, but he then pointed to another broker and said "He's brought in a 50,000 share sell order every day this week. Maybe he knows a big seller." The first floor broker walked over to the second, who then walked back to his booth, presumably to call his customer. A few minutes later, they printed a 500,000 share trade. In this way, the specialist helped a natural buyer meet a natural seller by disclosing just a little bit of what he knew about who was doing what. This reduced the leakage of information and thus the market impact for both parties. …"

"The NYSE has proposed to allow the DMMs to see some of the information contained in NYSE computers and to disclose it to floor brokers who ask. In other words, they want to allow the DMMs to have some of the kind of information similar to what the specialists used to have."

I apologize if I was not clear enough. Let me attempt to clarify this:

"Disaggregated pre-trade information" means which brokers are buying or selling a specific stock, and how much they want to buy or sell. Likewise, the post-trade, or "clearing" information is also about which brokers have bought or sold a specific stock, how many shares were traded, and at what price. This is information that the NYSE specialist routinely had access to back in the bad old days.

This is useful information because the DMM (f/k/a specialist) may be able to identify situations in which one broker is working a large buy order and another broker is working a large sell order, but their orders have not crossed in the system. For example, the limit price that the buyer entered into the system may be below the limit price that the seller entered into the system. By alerting one or both of those brokers, the DMM could precipitate negotiations between those two brokers that would lead to a large block transaction beneficial to both parties. This would allow the large buyer to trade directly with the large seller without having to let other traders know. If other traders found out about the pending order, they might try to trade in a way that would push the price in an unfavorable direction. Institutional investors

are very concerned about information about their pending trades leaking out when they put orders into the market. Reducing this information leakage reduces the market impact of the trades, thus reducing trading costs for investors. This creates a more fair and orderly market.

Post-trade information can similarly be useful for helping buyers meet sellers. When a floor broker with a large buy order inquires about the market in a particular stock to the DMM in that particular stock, the DMM could use information about past trades to identify a broker who has brought in many sell orders. That selling broker's customer may have a lot more to sell. Once again, by alerting only those two brokers, the DMM can midwife a large block transaction with a minimal amount of information leakage.

This is standard practice on the "upstairs" trading desks used by off-floor brokers. When they get a large block buy order, they look to see which of their customers own large blocks and might wish to sell.[5] By contacting only the most likely seller, the broker increases the chances of completing the trade quickly with minimal market impact for both the buyer and the seller.

In addition, facilitating block trades instead of forcing the participants to chop orders into small pieces provides benefits to the market as a whole. The buyer and seller will not be forced to send numerous little orders into the market, resulting in less message traffic in the market. Excess message traffic raises bandwidth costs for investors who have to pay to process more information in databases. Furthermore, fewer trades need to go so settlement, reducing costs there as well.

The whole purpose of an exchange is to provide facilities, services, and procedures that match buyers and sellers. The proposal to permit the DMM access to certain information that can be used to match buyer and seller certainly promotes the legitimate Floor function of matching buyer and seller.

If I am not clear enough this time, I invite anyone on the staff to contact me either by phone or email and I will happily attempt to clarify.

Institutional investors monitor execution quality very closely.

Most institutional investors pay very close attention to transactions costs. The Transaction Cost Analysis ("TCA") industry has come a long way in recent years and now analyzes the bulk of institutional trades. According to a TABB group survey, 97% of the long-only managers surveyed perform some form of transaction cost analysis, and 68% of them perform it daily, up from the 28% of managers who performed daily TCA in 2007. Likewise, the designers of algos and smart order routers have also become extremely sophisticated in monitoring execution quality across exchanges and non-exchange trading platforms.[6]

[5] See Kenneth Burdett, Maureen O'Hara, Building blocks: An introduction to block trading, *Journal of Banking & Finance*, Volume 11, Issue 2, June 1987, Pages 193-212, ISSN 0378-4266, 10.1016/0378-4266(87)90049-5. (http://www.sciencedirect.com/science/article/pii/0378426687900495)

[6] The term "algo" is a reference to a computer program that uses a computer algorithm, or formula, to figure out how to execute an order. A typical algo takes a large order and decides how to break it up into smaller pieces and how to

They know that most of their customers are monitoring execution quality very carefully. This means that the algos used even by firms that are lackadaisical about TCA will take execution quality into account.

Investors will vote with their feet if this hurts execution quality.

This close monitoring of execution quality implies that if the proposal hurts execution quality at the NYSE, the NYSE will quickly lose market share to its numerous competitors who are able to handle the volume and are eager to grab part of its 20.6% market share. The NYSE thus has all the right incentives to make sure that this program helps or at least does not hurt its execution quality.

The SEC has more important things to work on.

The SEC is far behind on meeting Congressional deadlines for mandated rulemakings under Dodd-Frank and the JOBS Act. One legitimate excuse is that Congress has continually underfunded the SEC, which is true. The SEC needs substantially more resources to perform its mission. If one adds up the cumulative SEC budget from 1934 to the present in current dollars, we have spent about $22 billion on the SEC– less than half the losses from one Enron.

However, this does not excuse the delays and the waste of SEC resources that occurred in this rulemaking process. The NYSE filed the original plan on October 31, 2011.[7] It was unopposed by anyone in the industry. Even after the staff extended the time and instituted proceedings to deny the original proposal, no one bothered to file any comment letters in opposition. Participants in this industry are not shy about publicly expressing concerns about market structure issues. If there had been any serious concerns about the proposal, it should and would have been expressed. This lack of opposition is, like the dog that didn't bark in the Sherlock Holmes story, a resounding signal. However, the staff, under delegated authority, rejected the proposal.[8] So now we are dealing with a proposal that is essentially the same as the previous one, only with a 38 page rule filing instead of the original 16 page filing.

The current proposal emphasizes more the voluntary nature of participation in the NYSE program. However, participation in the classic NYSE at all is now quite voluntary for all order types. Investors

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execute each piece. A "smart order router" is a computer program that takes an order and looks at the current state of the market and decides where to send the order for execution. For example, a smart order router might first check various "dark pools" to see if an order can be filled at better than exchange-quoted prices before sending an order to the "lit" market that has the best price.

[7] SEC File Number SR 2011-56. http://www.sec.gov/rules/sro/nyse/2011/34-65736.pdf.

[8] See http://www.sec.gov/rules/sro/nyse/2012/34-67437.pdf.

have many choices. Casual glances at brokerage firm Rule 606 reports indicates many brokerage firms do not send any orders at all to the NYSE.[9]

The SEC needs to do a better job of allocating its scarce resources to things that really matter. This will help the SEC to demonstrate that it is worthy of additional funding. When I discuss the SEC's desperate need for more resources with industry participants, they usually agree that the SEC needs more resources, but then they add "but they'll just waste them like they waste what they already get."

Exchange and ATS regulation need to be put on a level playing field.

The exchanges complain, and rightly so, that they have a much higher regulatory burden than off-exchange trading platforms. An ATS could have done exactly what the NYSE was proposing without needing any regulatory filings or approvals. Indeed, I suspect that many broker-dealer ATS "dark" pools already operate in a similar manner. Even if a given ATS itself is truly dark, the brokers operating the systems know which of their own customers' orders they have sent to their own systems, and may use this information to facilitate trades.

The intent of Dodd-Frank §916 is pretty clear: Congress intended for the SEC – in the language of the statute - to "streamline" the SRO rule approval process. SRO rule filings only have to be "consistent with" U.S. laws and regulations. They don't have to fit the staff's perception of perfection. The SEC already has broad authority to abrogate ex-post any rules that cause problems, so it should not waste resources micromanaging unopposed rule filings.

The proposed rule change does not "permit unfair discrimination."

The disapproving release seems to allege that the SRO has an affirmative obligation under SEC rules to prove a negative – that its rules are "consistent with" the Exchange Act in that the rules do not "permit unfair discrimination." The release raised the issue that it would be unfair for the DMM to share the designated information only with Floor brokers and not with off-Floor participants. What is being shared is a possibility for engaging in a business transaction – a block trade. What is unfair about a business sharing the possibility of a transaction with customers on its premises? Is there anything unfair about K-mart announcing a "Blue Light Special" only to people physically at its store and not to online customers?

Every exchange and off-exchange trading platform discriminates in the release of information. There is nothing inherently unfair about this as long as the information is available on the same terms and conditions to all who are similarly situated. Thus, exchanges sell real-time data feeds to those who pay more than for the delayed data feeds. Off-exchange trading platforms like Liquidnet only inform certain market participants about the possibility of a trade, namely those who are most likely to be a natural counterparty. There is nothing unfair about a DMM informing an inquiring floor broker about the

[9] SEC Rule 606 requires brokerage firms to post information on their web sites about where they route customer orders for stocks listed on U.S. equity and options exchanges.

likelihood of a natural counterparty to a trade. Those who want to partake of the NYSE's Floor products (and information) can easily route an order to a Floor broker who can fulfill their desires.

The fact that no one has objected to this proposal is strong evidence that it does not permit unfair discrimination. If it did permit such unfair discrimination, it is likely that there would be howls of righteous protest from those affected. Instead, the dog still doesn't bark.

I am not aware of any formal statutory definition of "unfair discrimination" in our securities laws. If there is one, or an authoritative regulation or opinion, I would appreciate it if someone would bring it to my attention. In the absence of such a definition, one generally goes with the plain language meaning.[10]

The proposed rule change promotes "just and equitable principles of trade."

I would argue that it would be unjust for an Exchange, whose job is to match buyer and seller, **not** to make the best possible use of the information in its systems to match buyer and seller. I think that most market participants think that it is fair that legitimate block buyers should be given a way to get in touch with legitimate block sellers.

The proposed rule change protects investors.

The NYSE proposal provides sufficient safeguards to protect investors. As mentioned above, competition provides the best safeguard. If investors think that the DMMs are improperly using the information in their orders, then investors will take their business elsewhere. If this functionality degrades market quality, the NYSE will quickly lose even more market share. Participation is voluntary, and investors have plenty of opportunities not to participate, or to take their business elsewhere. As the rule change provides another opportunity for institutional investors to reduce transactions costs it will protect investors by reducing the amount that they have to spend on transactions costs.

Furthermore, the DMM's own algos will not have the ability to electronically harvest this disaggregated information, so there is no danger that the DMM algos will electronically front-run customer orders. Any kind of front-running by any of the human participants would result demonstrate the kind of leakage that buy side traders fear and result in lower quality executions. Given the widespread usage of TCA, such poor quality executions would lead to a loss of market share at the NYSE. This gives the NYSE the right financial incentive to monitor execution quality and severely discipline anyone caught front running.

The proposed rule change is in the public interest.

This proposal is an attempt by the NYSE to create a mechanism for block trading that could allow institutions to trade blocks of stock with minimal market impact. It might work. If it does, it would

[10] See my article with Douglas McCabe, Fairness in Financial Markets: The Case of High Frequency Trading, (joint work with Douglas M. McCabe), *Journal of Business Ethics* 112(4), 585-595.

reduce transactions costs for institutional investors who trade on behalf of retail investors like me. Reduced transactions costs also lower the cost of capital, leading to more investments and more jobs. This is clearly in the public interest. The SEC should be ashamed of itself for bureaucratically stalling it so long.

If you have any questions, anyone at the Commission is invited to email or call me. Seriously.

Respectfully submitted,

James J. Angel, Ph.D., CFA

Appendix: Elkins-McSherry Global Transactions Costs Data from 2006

Note that the total cost of transacting, at 17.51 basis points (.1751%) was lower on the NYSE than on any other country's stock exchanges, even the all-electronic ones.

2Q06 Elkins/McSherry Global Universe

COUNTRY AVERAGES	PRICE	COMM	FEES	MKT IMPACT	TOTAL
ARGENTINA	$4.24	35.00 BP	0.42 BP	27.68 BP	63.10 BP
AUSTRALIA	$8.43	20.75 BP	0.90 BP	8.31 BP	29.96 BP
AUSTRIA	$54.42	16.70 BP	0.66 BP	10.55 BP	27.91 BP
BELGIUM	$61.61	17.17 BP	0.54 BP	10.22 BP	27.93 BP
BRAZIL	$6.47	25.61 BP	1.35 BP	14.49 BP	41.45 BP
CANADA	$30.71	13.35 BP	0.40 BP	10.23 BP	23.98 BP
CHILE	$8.57	38.76 BP	1.89 BP	15.26 BP	55.91 BP
COLOMBIA	$9.25	50.50 BP	2.93 BP	18.73 BP	72.16 BP
CZECH REPUBLIC	$114.18	39.02 BP	2.11 BP	15.04 BP	56.17 BP
DENMARK	$50.34	17.71 BP	0.65 BP	15.82 BP	34.18 BP
FINLAND	$18.58	16.59 BP	0.69 BP	20.18 BP	37.46 BP
FRANCE	$50.61	16.02 BP	0.47 BP	6.58 BP	23.07 BP
GERMANY	$55.08	16.24 BP	0.38 BP	5.51 BP	22.13 BP
GREECE	$25.01	25.44 BP	11.63 BP	12.11 BP	49.18 BP
HONG KONG	$2.26	20.53 BP	11.53 BP	6.55 BP	38.61 BP
HUNGARY	$47.30	34.79 BP	5.94 BP	12.35 BP	53.08 BP
INDIA	$16.34	39.96 BP	8.29 BP	14.65 BP	62.90 BP
INDONESIA	$0.40	39.96 BP	11.01 BP	14.86 BP	65.83 BP
IRELAND - BUYS	$15.46	18.51 BP	100.00 BP	13.60 BP	132.11 BP
IRELAND - SELLS	$15.23	16.43 BP	0.38 BP	12.95 BP	29.76 BP
ITALY	$10.25	16.62 BP	0.51 BP	10.65 BP	27.78 BP
JAPAN	$21.80	14.08 BP	0.32 BP	5.90 BP	20.30 BP
KOREA	$74.72	26.38 BP	14.76 BP	11.17 BP	52.31 BP
LUXEMBOURG	$31.32	20.02 BP	0.16 BP	16.56 BP	36.74 BP
MALAYSIA	$2.06	30.14 BP	6.13 BP	9.55 BP	45.82 BP
MEXICO	$4.73	25.66 BP	0.01 BP	11.22 BP	36.89 BP
NETHERLANDS	$26.16	16.54 BP	0.40 BP	8.56 BP	25.50 BP
NEW ZEALAND	$3.11	21.97 BP	0.30 BP	12.35 BP	34.62 BP
NORWAY	$21.84	17.34 BP	0.05 BP	13.13 BP	30.52 BP
PERU	$6.29	40.03 BP	16.01 BP	17.61 BP	73.65 BP
PHILIPPINES	$6.60	41.75 BP	30.85 BP	12.20 BP	84.80 BP
PORTUGAL	$6.53	17.07 BP	0.09 BP	11.79 BP	28.95 BP
SINGAPORE	$3.45	24.11 BP	2.74 BP	12.19 BP	39.04 BP
SOUTH AFRICA	$14.31	23.13 BP	12.72 BP	12.10 BP	47.95 BP
SPAIN	$20.23	16.66 BP	0.39 BP	10.28 BP	27.33 BP
SWEDEN	$14.37	17.33 BP	0.67 BP	10.24 BP	28.24 BP
SWITZERLAND	$88.86	16.31 BP	0.68 BP	10.38 BP	27.37 BP
TAIWAN	$2.00	26.99 BP	11.55 BP	8.52 BP	47.06 BP
THAILAND	$1.69	36.06 BP	1.75 BP	16.37 BP	54.18 BP
TURKEY	$5.57	33.85 BP	2.68 BP	20.14 BP	56.67 BP
U.K. - BUYS	$8.23	15.18 BP	49.91 BP	7.45 BP	72.54 BP
U.K. - SELLS	$8.77	15.10 BP	0.52 BP	8.80 BP	24.42 BP
U.S. - NYSE	$33.68	12.05 BP	0.46 BP	5.00 BP	17.51 BP
U.S. - NASDAQ	$27.06	13.17 BP	0.42 BP	7.07 BP	20.66 BP
VENEZUELA	$9.01	47.19 BP	9.79 BP	35.10 BP	92.08 BP
Total 45	**$23.27**	**24.53 BP**	**7.25 BP**	**12.67 BP**	**44.44 BP**