



NASAA

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Via Electronic Submission

February 16, 2010

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

Re: **Regulation of Non-Public Trading Interest
Release No. 34-60997; File No. S7-27-09**

Dear Secretary Murphy:

The North American Securities Administrators Association, Inc. (“NASAA”)¹ supports the efforts of the Securities and Exchange Commission’s (“Commission”) most recent attempts to propose amendments concerning dark pools under the Securities and Exchange Act of 1934 (“Exchange Act”) and appreciates the opportunity to comment on these amendments.

We note the various regulatory proposals and efforts taken by the Commission affecting dark pools and enhancing market transparency. While NASAA is supportive of the overall goals that the Commission is working towards, we will confine our comments to the above-referenced release and its specific content.

The sharp growth rate of dark pools is a clearly documented phenomenon with both direct and ancillary effects. In recent history, we have seen how excesses in certain areas typically lead to systemic regulatory and marketplace issues. Some examples are the analyst conflicts of interests, liquidity concerns with auction rate securities, and collateralized debt obligations in the real estate sector. We agree with you that dark pools constitute an emerging risk in the market.

¹ NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

The SEC correctly acknowledges that a two-tiered system of trading exists through dark pools. Portions of the release and certain suggestions appear to be valid efforts to create more transparency.

However, NASAA harbors some concern as to the \$200,000 threshold suggested for “actionable IOIs” (IOIs). Dark pools, by their very nature, are simply inconsistent with transparency. NASAA suggests that the SEC act swiftly to ensure that investors be protected from the rapidly changing dark pool marketplace.

I. Actionable Indications of Interest as bids – dark pools to remain dark

The SEC has redefined IOIs as bids through a rational and convincing argument. NASAA encourages the SEC to step into its own argument rather than away from it. To put it another way, why should IOIs be limited to bids in transactions under \$200,000? While the well-argued rationale is set forth for IOIs, the rationale appears to break down regarding terms of the carve-back from all transactions but for those under \$200,000. NASAA wonders how much of the vastly expanding dark pool market would then be regulated by the new standard for IOIs?

Making the size defined carve back to IOIs so significant is an ineffective approach to market regulation. NASAA strongly disagrees with the SEC in terms of the \$200,000 threshold as it relates to “size discovery” IOIs. Announcing to the public that the SEC will further regulate dark pools while requesting comments on the suggestion that an absolute minimum of that market would be further regulated by its new IOI proposal is a proposition that NASAA cannot support.

NASAA suggests the SEC consider more aggressive action related to dark pools and their operation to provide an authentic level of transparency and oversight into this arena. The current \$200,000 threshold suggestion is woefully inadequate for the purposes of promoting any meaningful degree of transparency.

II. ATS Display Obligations

We applaud the SEC’s efforts to require that ATSS be obligated to report best-priced orders at a .25% volume threshold. We believe that it is quite possible that this threshold will provide more transparency to the market place.

III. Post-Trade Transparency for ATSS

We applaud the SEC’s efforts to require additional “real time” post trade transparency for ATSS. Notwithstanding, if this new reporting requirement also exempts reporting of transactions over \$200,000, NASAA calls for the SEC to reassess the effectiveness of this proposed new system.

In closing, irrespective of the standards set forth in Regulation ATS, NASAA wonders why the SEC appears reluctant to treat dark pools more similarly to a broker, dealer, or an

exchange. From insider trading investigations, to potential market execution irregularities and transparency, there are many concerns about the current operations of dark pools that should be addressed.

Please do not hesitate to contact the undersigned regarding this matter.

Sincerely,

/S/

Rex A. Staples
General Counsel
NASAA