

Please note that the comments expressed herein are solely my personal views

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Chris Barnard

25 February 2016

- 17 CFR Parts 240, 242 and 249
- Release Nos. 34-76474; File No. S7-23-15
- Regulation of NMS Stock Alternative Trading Systems

Dear Sir,

Thank you for giving us the opportunity to comment on your proposed rule on: Regulation of NMS Stock Alternative Trading Systems.

You are proposing to amend the regulatory requirements in Regulation ATS under the Securities Exchange Act of 1934 (Exchange Act) applicable to alternative trading systems (ATs) that transact in National Market System (NMS) stocks, including so called dark pools. One of your specific questions concerning dark pools is: Do investors have sufficient information about dark pools to make informed decisions about whether in fact they should seek access to dark pools? Should dark pools be required to provide improved transparency on their trading services and the nature of their participants? If so, what disclosures should be required and in what manner should ATs provide such disclosures? In answer to this I enclose my comment letter on IOSCO's 2010 Consultation Report on Issues Raised by Dark Liquidity, which addresses some of these key issues of transparency.

Yours faithfully

C.R.B.

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30 November 2010

**- Public comment on IOSCO's Consultation Report on
Issues Raised by Dark Liquidity**

Dear Mr. Bijkerk.

Thank you for giving us the opportunity to comment on your Consultation Report "Issues Raised by Dark Liquidity".

I welcome your main principles. We need to act to ensure that dark liquidity pools do not impact the price discovery process in transparent markets. It can be argued that each share traded by dark order reduces the information that could assist the transparent market in determining an accurate, fair price. If the recent high growth in dark orders continues, then at some point the prices quoted on transparent markets may not be efficient or informative, and this could damage the veracity of trading itself, whatever medium is used or wherever it is carried out. On the other hand, dark liquidity pools serve a useful purpose to those wishing to trade large blocks of shares at lower cost without moving the public price as a result of other market participants identifying and trading ahead of their interest.¹

Concerning indications of interest (IOIs), I would argue that IOIs are reasonably used to provide liquidity, aid order matching, and when advertising large-scale liquidity to potential counterparties. However, the information contained in IOIs is not available to the transparent market and potentially impedes the price discovery process here. I would

¹ See Dark Pools Let Big Institutions Trade Quietly, Investor's Business Daily, 2008; Dark Pools of Liquidity, PwC, 2009; The rise of dark pools: Attack of the clones, The Economist, 2009; Consultation Paper 23-404 – Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada, CSA/IIROC, 2009; Regulation of Non-Public Trading Interest, SEC, 2009; Concept Release on Equity Market Structure, SEC, 2010; Micro-structural issues of the European equity markets, CESR, 2010; Shining a light on Dark Pools, the Independent, 2010; Draft Report on Regulation of trading in financial instruments – 'dark pools' etc, European Parliament, 2010; Consultation Paper 145 Australian equity market structure: Proposals, ASIC, 2010.

argue that there is a trade-off between transparency and liquidity here, and it is important to find the right balance between the two. In my opinion traditional IOIs do not create any information asymmetry and are therefore reasonable, whereas actionable IOIs are used primarily to provide information to a selected group of market participants, thus creating the potential for two-tiered access to information, and that this justifies regulatory intervention.

In response to your specific principles I would add the following:

Principle 1: *The price and volume of firm bids and offers should generally be transparent to the public. However, where regulators consider permitting different market structures or order types that do not provide pre-trade transparency, they should consider the impact of doing so on price discovery, fragmentation, fairness and overall market quality.*

I agree with this principle, but regulators should allow for exemptions to the transparency requirements for orders exceeding a minimum size. Such a block exemption rule/limit would maintain the advantages of dark liquidity pools for investors trading large blocks of shares. I would also suggest that actionable IOIs be treated as quotes and should therefore be transparent to the public.

Principle 2: *Information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public. With respect to the specific information that should be made transparent, regulators should consider both the positive and negative impact of identifying a dark venue and/or the fact that the trade resulted from a dark order.*

As a general point there is also a need for post-trade transparency for dark pools. I would prefer that all types of exchange should post in real time and disclose the venue in which it traded. However, as a minimum, disclosure should be required on a delayed basis at the end of each day. Even this will promote transparency and provide valuable information about the location of liquidity sources.

Principle 3: *In those jurisdictions where dark trading is generally permitted, regulators should take steps to support the use of transparent orders rather than dark orders executed on transparent markets or orders submitted into dark pools. Transparent orders should have priority over dark orders at the same price within a trading venue.*

I agree with this. In fact I would recommend that dark orders should be required to provide price improvement over the National Best Bid/Offer (NBBO) to orders smaller than the block exemption limit (see my response to Principle 1 above).

Principle 4: *Regulators should have a reporting regime and/or means of accessing information regarding orders and trade information in venues that offer trading in dark pools or dark orders.*

Agreed. This will improve the quality of information about sources of liquidity in markets, and increase public confidence in the integrity of markets.

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Principle 5: *Dark pools and transparent markets that offer dark orders should provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed.*

Agreed. This is important in order to maintain confidence in markets.

Principle 6: *Regulators should periodically monitor the development of dark pools and dark orders in their jurisdictions to seek to ensure that such developments do not adversely affect the efficiency of the price formation process on displayed markets, and take appropriate action as needed.*

I agree with this. This is eminently sensible and necessary in order that regulators keep up with market and technological developments.

Yours sincerely

C.R.B.

Chris Barnard