



February 23, 2016

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
150 F Street, NE  
Washington, DC 20549-1090

*Re: Regulation of NMS Stock Alternative Trading Systems (File No. S7-23-15)*

Dear Mr. Fields:

Luminex Trading & Analytics LLC ("Luminex")<sup>1</sup> appreciates the opportunity to comment on above-referenced rule proposal with respect to Alternative Trading Systems (ATSs) that execute trades in NMS Stocks (the "rule proposal"). As a general principle, Luminex supports transparency by market participants and believes that it is good for investors to have access to information on how their orders are handled and with whom they are dealing. In fact, Luminex was among the first ATSs to publish its Form ATS on its public website concurrent with the commencement of trading. In addition, Luminex also requires all Luminex subscribers to consent to having their names publicly disclosed on the Luminex website so that all of the firm's subscribers know the universe of entities that they could be executing against.

Luminex believes that its subscribers are well-served by having the details of the operations of its ATS made public because then those subscribers can make informed decisions as to whether to route orders to Luminex or elsewhere. However, while transparency is a fundamental aspect to why Luminex was formed to begin with, Luminex believes that too much information, or rather too much extraneous information, can cause confusion and opacity rather than transparency. In that regard, Luminex believes that the rule proposal goes too far and is too broad, preventing it from achieving the ends that the SEC had hoped.

The SEC's Proposed "Effective"/"Ineffective" Regime for ATSs is Unnecessary and Will Have a Chilling Effect on Current and Future Equity Markets Innovation

The SEC is imposing a regulatory regime on ATSs that is more appropriate for and applicable to securities exchanges because of their very important status as self-regulatory organizations over the trading in their markets. And although there are several dozen SEC-registered ATSs now, and some have been the subject of very high-profile disciplinary actions in recent months, all NMS Stock ATSs combined account for less than 20% of the trading volume in these securities. Very few NMS Stock ATSs account for even 1% of the trading volume in these securities. However, the rule proposal would require extensive and on-going disclosure obligations on all ATSs, regardless of how much or how little volume each ATS effects on its system.

The unnecessary and superfluous information required by the rule proposal is likely going to have a chilling effect on firms that currently operate ATSs today and any that would otherwise contemplate launching a new ATS. And while recent legislation such as the JOBS Act were designed to foster innovation and make access to U.S. capital markets easier for start-up companies that need to raise capital to build and grow, the rule proposal here would have the

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<sup>1</sup> Luminex is an SEC-registered Alternative Trading System ("ATS") which commenced trading in 2015. Luminex is owned by a consortium of nine leading investment management firms working together to help buy-side traders execute large block trades at low cost and with little market impact.

opposite effect, dissuading some existing ATSS from continuing due to the exponential increase in regulatory burden and likely discouraging other innovators interested in launching new ATSS from even coming to market due to the time and expense of doing so under the new regime. There could be other firms out there like Luminex with an innovative idea to contribute to the trading of NMS stocks that will be dissuaded from doing so due to the significant new regulatory burdens imposed by the SEC in the rule proposal. As discussed more fully below, if a fundamental suite of information is made public by all ATSS, such as by an enhanced Form ATS, that would likely promote the fundamental disclosure of ATS operations that the SEC is seeking.

Luminex believes that the information that should be disclosed by ATS operators, if applicable to them, should be categorized in two distinct tranches: information such as that contained in pertinent parts of the current Form ATS that all market participants should have in order to make informed decisions on where to route their orders; and, information that only the SEC needs to effectively discharge its regulatory obligations with respect to ATSS. Instead of the unduly burdensome and undoubtedly confusing disclosure regime contained in the rule proposal, Luminex suggests the following:

#### The SEC Should Require NMS Stock ATSS to Make Public Their Form ATSS

The existing Form ATS already calls for the disclosure of fundamental information that market participants should have in determining whether to route orders to that particular ATS. And that fundamental suite of information should be made public via the mandated publishing of Form ATS by all SEC-registered ATSS. Proposed Form ATS-N, however, would require a crippling amount of detail that would no doubt be interesting and useful to the SEC but would be an overload for nearly all market participants. What follows is a comparison of the information currently required via the existing Form ATS against what would be required via proposed Form ATS-N.

Exhibit A of the current Form ATS calls for ATS operators to disclose the types of subscribers they have. In Exhibit A, ATS operators can disclose what types of individuals or entities that it admits or does not admit to their ATSS and whether the ATS offers different functionality to different classes of subscribers, if applicable. This is very similar to the information requested in proposed Form ATS-N in Part 3 Item 3 (Products or Services Offered to Subscribers) and Part 4 Item 1 (Subscribers).

Exhibit B requires ATS operators to describe the security types that are traded on their ATS. Since proposed Form ATS-N is designed to be applicable to NMS Stock ATSS only, there is no comparable question on proposed Form ATS-N.

Exhibits C and D require ATS operators to disclose contact information for counsel to the ATS and a copy of their formation documents, respectively. Interestingly, this information is not explicitly requested via the proposed Form ATS-N, and Luminex agrees that the information required to be disclosed via current Exhibits C and D of Form ATS does not benefit market participants and should not be required to be publicly disclosed.

Exhibits E and F in particular provide especially useful information for market participants to use in determining where to route their orders. Exhibit E calls for the disclosure of other entities relevant to the operation of the ATS. This would be helpful in determining whether there are apparent conflicts of interest that could come into play in terms of how orders are executed in the ATS. This is similar to information requested in proposed Form ATS-N in Part 3, Item 7 (Shared Employees of the NMS Stock ATs), Part 3, Item 8 (Service Providers to the NMS Stock ATs), and Part 3, Item 13 (Trade Reporting, Clearance and Settlement). Luminex notes that Part 3 of proposed Form ATS-N requests a significant amount of information that does not relate to the operation of the NMS Stock ATS at all. As noted below, we believe that information is best

requested by the SEC for its own use in inquiries sent directly to the firms that are of regulatory interest to the SEC and not via request to NMS Stock ATS operators by proxy.

Exhibit F calls for the disclosure of the manner of operation of the ATS itself and includes very relevant information with respect to order types and characteristics, any details on the priority of orders in the ATS and how orders interact with each other, what the ATSs hours of operation are, and how subscribers can access the ATS. This is similar to information requested in proposed Form ATS-N in a number of items in Part 4.

Given that much of the most important information that would be required to be disclosed by the rule proposal is already required to be disclosed by the ATS operators to the SEC, and that a number of firms like Luminex have already made this essential information public, the SEC can achieve its transparency goals by requiring all ATS operators to publicly disclose their Form ATSs as Luminex has done.

The rules underpinning the current Reg ATS already require the updating of the Form ATS when material changes to the ATS are being made. Once the ATS operator's Form ATS has been amended, that updated Form should be promptly made public in place of the most recently published Form, thereby keeping market participants updated on the most current operations of the ATS.

The SEC Should Not Use Proposed Form ATS-N as a Buckshot Approach to Request and Make Public Affiliate Information That May Have Nothing to Do with the Operations of the ATS Itself

The rule proposal, if approved in current form, would require extensive public disclosure of the operations of affiliates of the ATS operator, even if those affiliates have nothing to do with the operations of the ATS itself. Our firm, for example, is a control affiliate of Fidelity Investments by virtue of Fidelity's ownership stake in Luminex. However, Luminex is self-operating, and Fidelity has nothing to do with the day to day management and operation of Luminex. Fidelity has a seat on the Luminex Board of Directors, as do the other members of the Luminex ownership consortium who are not control affiliates of Luminex<sup>2</sup>. Employees of Luminex, such as the undersigned, are not Fidelity employees. Fidelity itself is a very large, diversified financial services organization with affiliates or divisions that aren't connected to Luminex; however, the rule proposal would require Luminex to request detailed information from Fidelity about these Fidelity entities and their own operations that Luminex, as an independently-run entity, does not have. The SEC appears to be casting a wide net to ferret out conflicts of interest in the operations of ATSs, but requiring otherwise unconnected ATS operators to go get and then publicly disclose information that they don't already have is not the most effective means of achieving this goal. The rule proposal, if adopted in its current form, would have the unintended consequence of the public disclosure of a significant amount of information that isn't relevant either to the ATS itself or to the market participants in determining where best to trade.

The SEC Should Request Information on Trading Algorithms or Smart Order Routers from the Firms that Operate Them, Not from ATSs that Receive Orders from Them

There are numerous questions in the proposed Form ATS-N that would require ATS operators to act as de facto agents of the SEC, asking the ATS operators to seek information relating to the operations of certain trading algorithms or smart order routers that the ATS operators have nothing to do with and may be blocked via firm information barriers from knowing anything about.

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<sup>2</sup> Fidelity's asset management entity – Fidelity Management & Research Company – is a subscriber or client of Luminex, as are the other Luminex ownership consortium members. In that regard, Fidelity has no more information about, and no higher or different priority in, the Luminex trading system than any of the more than 100 other subscribers to our platform.

ATS operators should properly be asked about how their ATSS work, and that information should be made available to all market participants. If the SEC wants ATS operators to disclose whether they give preferential treatment to orders from affiliates at the expense of other ATS customers, or if they give preferential treatment to anyone else that isn't an affiliate over other ATS customers, then the SEC should pose that specific question and require a specific answer. Anything beyond that which is of regulatory interest to the SEC with respect to how trading algorithms or smart order routers interact with ATSS generally or with other market centers should be asked of the firms that own or operate those algorithms or smart order routers.

The SEC Should Not Make Public Information Relating to Administrative Aspects of ATS Operators That May Be of Interest to the SEC But Is Not Useful to Market Participants in Making Routing Decisions

The rule proposal, if approved as proposed, would require ATS operators to disclose and make public myriad details about the administrative operations of the ATS that provide little, if any, benefit to the investing public. Whether the ATS operator shares back-office or technology resources with another entity or outsources any of its operations to third parties again may be of interest to the SEC staff but would not contribute to the transparency goals that are the foundation of the rule proposal. If the SEC modifies the rule proposal such that this type of information is provided to the SEC upon request, the information should be viewed as a "point-in-time" disclosure that should not require continual updates unless the SEC specifically asks the submitting ATS operator for updated information.

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Luminex believes the SEC can achieve its public policy goals with respect to transparency in the ATS segment of NMS equity trading with a minor amendment to its rules to mandate that Form ATS be made public, as Luminex and some other firms have done. We believe that the investing public will not be well-served by the public disclosure of administrative minutiae that will do nothing but confuse most investors and won't assist even sophisticated investors in deciding where to route their orders in seeking best execution. That level of information is best suited for SEC review, if the SEC is so inclined to request it. If an amended rule proposal is limited to the public disclosure of ATS operators' Form ATS, then Luminex believes that this public disclosure should apply to all ATSS and not just those that trade NMS stocks.

Once again, Luminex appreciates the opportunity to comment on this proposal. Transparency was one of the principals under which Luminex was founded by its consortium members, and more than 100 other like-minded firms appreciate the fair and open way we operate our ATS. We at Luminex appreciate the SEC's efforts to ensure that market participants have the core information they need in order to make well-informed order routing decisions.

Sincerely yours,



Jonathan A. Clark  
Chief Executive Officer



James C. Dolan  
Chief Compliance Officer

cc:

The Honorable Mary Jo White, Chairman  
The Honorable Kara M. Stein, Commissioner  
The Honorable Michael S. Piwowar, Commissioner

Mr. Stephen Luparello, Director, Division of Trading and Markets  
Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets  
Mr. David Shillman, Associate Director, Division of Trading and Markets