Via e-mail to: rule-comments@sec.gov

US Securities and Exchange Commission
100 F Street, N.E,
Washington, DC 20549-1090

December 8, 2009

RE: File No. S7-27-09
Release No. 34-60997

Ladies and Gentlemen:

This letter is submitted on behalf of TABB Group, LLC in response to the request made by the Securities and Exchange Commission for comments on its November 13, 2009 proposal referenced above.

TABB Group is a premier financial markets research and advisory firm. Our management and analysts have decades of experience on the front lines of the financial services sector, affording us a deep understanding of the markets, their infrastructure and market trends. TABB understands the intricacies of the marketplace, the relationships between sectors, and the interdependencies of the market participants, regulatory bodies and exchanges. Our business revolves around interviewing professional market participants to better understand their needs and difficulties to help the industry provide better solutions. Our clients represent all aspects of the institutional financial community from ATSs, banks, brokers, depositories, exchanges, hedge funds, investment managers and technology vendors.

TABB Group interviewed 66 head traders (Fall 2009) at many of our nation's largest mutual fund and investment advisory firms for our most recent annual study of buy-side trading, *US Institutional Equity Trading 2009/10: Dark Pools, Transparency and Consequences*. The discussions covered post-crisis regulatory scrutiny from regulators and legislators, as well as the views of head traders with regard to short sales, flash orders, high frequency trading, dark pool restrictions; and the impact of electronic IOIs/IOCs on the use of dark pools.

The report also examines the continued growth of low-touch trading and the demand for transparency into electronic trading infrastructure. Attached are excerpts from the study, which describe buy-side views on proposed regulatory restructuring and the effects of high frequency trading on the marketplace.

The comments expressed in this letter represent the views of TABB Group only and have not been approved by any market participant and therefore do not represent the official position of any particular firm outside of TABB Group.

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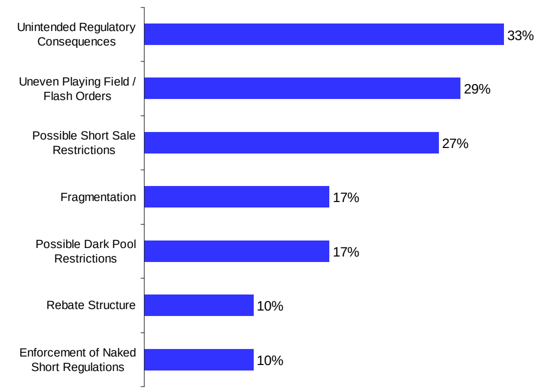
Unintended Consequences of Market Structure Regulation

As difficult as trading is today, there is significant concern that it could get harder before it gets easier. The single most talked about topic in today's market is not dark pools, algorithms or even high frequency trading – it is the intense regulatory scrutiny that is coming from both legislators and regulators. While the regulators and legislators have the holistic market's best interests at heart, there are significant worries that a severe regulatory or legislatively mandated market structure shock will have major unintended consequences. Above all other concerns voiced, action for the sake of action raises the biggest red flag. There is political pressure to bring back investor confidence, but many of the actions being considered would not only fail to achieve the objective but do more damage than good.

Exhibit 1
What is the Most Important Market Structure / Regulatory Issue Today?



Source: TABB Group

Traders are more concerned about this issue than they are about any other item on the list of possible market structure changes that may occur in the coming months. Or, more accurately, they view the risk of unintended consequences as the overarching danger hovering above a series of market structure issues that may or may not require action at all (see Exhibit 1).

The pace of change in market structure is increasing and the outcome is not yet clear. From Reg NMS routing rules to stealthy liquidity-seeking algorithms, from broker internalized dark pools to electronic liquidity providers and market makers, the market structure changes and their impact on trading have exploded at a furious rate.

Proceed With Caution

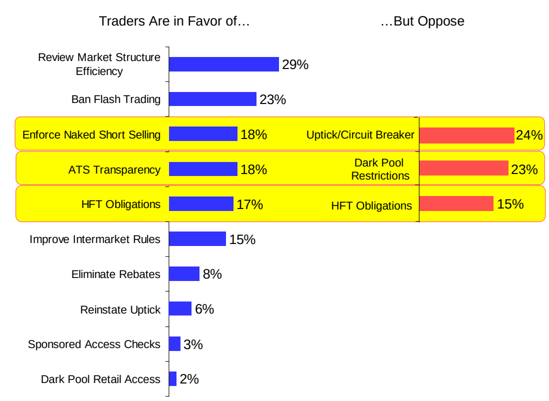
Regulatory uncertainty is pervasive, traders say. There is gathering political momentum to "do something" on many fronts in the name of restoring investor confidence, and yet in the case of several current proposals, there is little buy-side support for increased regulation. There is grave concern on the part of buy-side traders that inappropriate action could be taken on multiple pending issues that would have a dramatic negative impact on their ability to trade effectively. The fear is that liquidity will be impeded in some way, or withdrawn from the market just when it is needed most. There is concern that the ability to trade anonymously and in large trade sizes will be jeopardized or destroyed. There is a lack of confidence that the requisite data has been captured and the requisite analysis completed to determine cause and effect or even the need for additional regulation beyond that which is already on the books. And these traders would like to have a voice on these matters, to provide input into these possible regulatory decisions

The number one recommendation from heads of buy-side desks on action to be taken to improve market structure is to move slowly, carefully, and with the utmost of care. What action would these traders like to see today as the politicians and regulators contemplate how to restore investor confidence? Twenty-five percent of head traders say three things: "don't do anything precipitously," get rid of an uneven playing field by banning flash orders, and leave short sales alone. Another 23% are calling for no restrictions on dark pools – no reporting requirements whatsoever and no action that would threaten the choice to go dark.

Enforce Existing Regulations

Indeed, there are several issues that have traders calling for a simple tightening or standardization of existing rules and regulations, as opposed to putting new, more restrictive regulations into place. Many view "flash" orders as an attempt take advantage of a regulatory loophole in order to give a "first look" to a subset of market players who in turn have no obligation to trade. Those high-frequency players, they say, may make a valuable economic contribution to the exchanges if they trade against a flash order, but the fact that they are not obligated to do so poses a risk to the end investor. They believe this look may very well be to their disadvantage, and, furthermore, is not in the "spirit" of Reg NMS (see Exhibit 2).

Exhibit 2
Regulatory Actions Traders Favor… and Oppose



Source: TABB Group

On the other hand, taking action to restrict short sales is viewed negatively by 24% of head traders. They cite the SEC's own analysis of short selling, conducted in 2008 by the Commission's Office of Economic Analysis, which found no correlation at all between short sales and bear moves. Indeed, the study found that the majority of short sale trades were occurring on upticks in stock prices. The fear, they say, is that any kind of price or event collar on short selling will remove liquidity from the marketplace at the absolutely worst time, when the market needs more liquidity, not less. To correct short sale manipulations, many traders would like to see continued effective enforcement of the "naked short sale" rules, which has already significantly contributed to a reduction in illegal naked shorting activity, considered to be the real culprit in any "bear raid" scenarios.

Leave Dark Pools Dark

The SEC has proposed new regulations on dark pools, including reporting requirements in real time and significantly tighter volume restrictions. These rules proposals were put on the table in October 2009, which was subsequent to our conversations with our head trader participants. Even before it was announced that dark pools might be restricted in some way, traders were voicing as much concern about increased regulations here as they were about short sale restrictions.

Traders say that the very reason dark pools exist in the first place is to protect institutional orders from adverse price movement caused by overexposure in lit markets. Institutional equity traders emphasize their obligations as fiduciaries in handling the orders of retail investors in mutual fund, pension, and 401K investment portfolios. These orders can be of significant magnitude in a market where the average size of an exchange-traded order is in the 200- to 300-share range. Dark pools allow traders to minimize information leakage while still offering the possibility of an execution. They are an important alternative to other ways of trading.

There is a split opinion on dark pool reporting, as 18% think that some form of reporting would be helpful in improving market transparency. But the nature and timing of any dark pool reporting is critical to their continued success. Traders are very concerned about the possibility that dark pools may be required to report their trades in real time. This information, they say, would be in direct conflict with the dark objective of limiting information leakage and market impact on large institutional orders. Arbitrage and day-trading strategies would have an easier time at picking off dark pool order flow if they could see which dark pool was trading a given name at a given point in the day. Post-trade reporting is preferable, but here too, traders say that any trade reporting that would identify the specific dark pool should be late enough in time so as to be of little value to the fast-money players. Post-market close reporting could offer institutional traders insight as to how liquidity is shifting in certain market names or market centers, while offering little opportunity for gamesmanship.

In the meantime, head traders at buy-side firms have a job to do, choices to make, and alpha to capture. And they have made changes in their trading behavior to adjust to the shifting landscape. The landscape has some fast-growing players in the game, most recently high frequency traders, while old-line traditional players, like Bear Stearns and Merrill Lynch, have evolved into different firms with different profiles, people and proficiencies. Buy-side traders are continually challenged to adapt and adjust their trading behavior in the face of this constant wave of market evolution. They are increasingly sophisticated, increasingly knowledgeable, and want to decide their own fate.

High Frequency Trading

What of this high frequency trading that everyone is talking about? High frequency trading (HFT) volume has continued to increase as a percentage of overall daily equity activity, and as a result, has captured the attention of the marketplace, the media and the regulators.

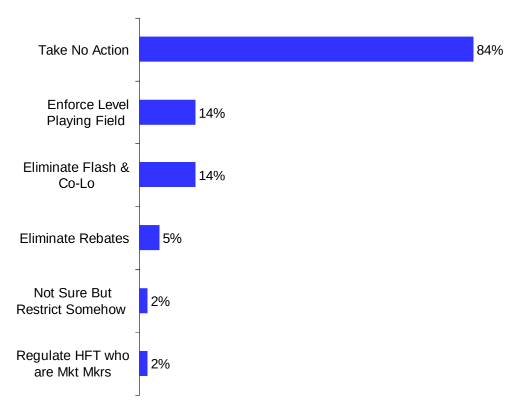
TABB Group estimates that as much as 61% of daily US equity share volume and 70% of daily total trades are attributable to some form of high frequency activity. The primary players in high frequency trading are not the traditional long-only asset managers or even the traditional hedge fund community. Rather they are made up of a combination of independent trading firms, dealers and proprietary trading desks.

Independent high frequency shops represent up to half of daily high frequency flow. They locate their algorithmic execution strategies on servers sitting in as close physical proximity to the markets' matching engines as physics and economics will allow. They trade quantitative and statistical arbitrage strategies, momentum strategies, even rebate capture strategies. They compete head to head with a second high frequency player, the registered broker/dealer and market making firm, who provides streaming two-sided liquidity both within and across asset classes. Options market makers, for example, implement high speed hedges in equity securities against their high speed dealing in hundreds, if not thousands, of individual options series. Upstairs proprietary trading desks at sell-side investment banks are the third largest component of this business. They implement rapid-fire trading strategies both in support of their customer businesses as well as for the purposes of capturing alpha for the bank's own trading account. They may be implementing their own alpha capture or statistical arbitrage strategies as well as hedging against their OTC derivatives businesses.

High Frequency? That's Life

Is this "good" liquidity or "bad" liquidity from an institutional equity trader's point of view? Quite a few traders say they are concerned that there has been a lot of obfuscation in the popular media about the nature and the significance of this type of order flow. Professional traders say that such inaccuracies or misinformation is damaging to the markets, that everything from flash orders to naked access is being lumped in with the ability to execute automated quantitative strategies in micro-second speeds and the ability to hide in the dark.

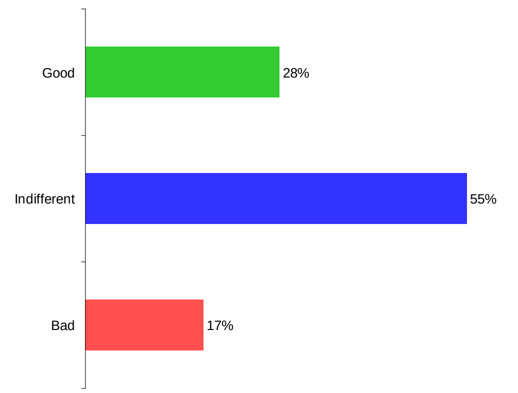
Exhibit 3
What Would You Like to See Done About High Frequency Trading (HFT), If Anything?



Source: TABB Group

Head traders we spoke to call for a period of reason and analysis, of education and clarification over hysteria and hype. The potential consequences of ill-informed market regulations on high frequency flow are of far greater concern to these traders than any concerns about the presence of the flow itself (see Exhibit 3).

Exhibit 4
Is HFT Good for Your Firm's Trading Style or Bad, or Are You Indifferent?



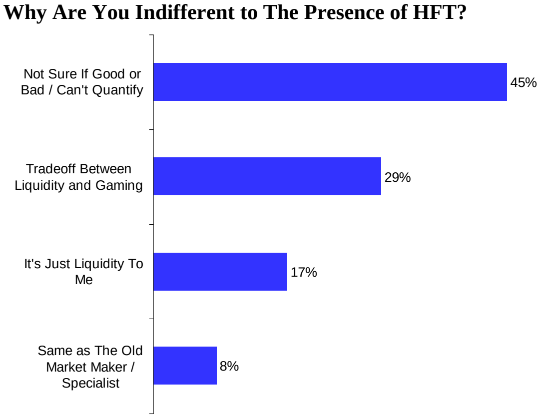
Source: TABB Group

Because it moves at lightning speed, is high frequency flow even liquidity at all? When asked if high frequency flow is "good" for their own firm's trading style or "bad," or if they're just indifferent about it, over half of the head traders we spoke to expressed the view that high frequency flow is neither good nor bad, it's just a fact of the marketplace today, neither inherently an impediment nor an advantage (see Exhibit 4).

Some say HFT is probably more accurately categorized as "volume noise" than anything else. For example, an institutional trader who is building a multi-million-share position in a large-cap concentrated growth fund may find it difficult to derive liquidity value from thousands of streaming orders passing across market venues at very high speed and in very small share sizes. He might benefit more from a block crossing network or an indication of interest from a block-sized contra. On the other hand, given how difficult it is today to find block liquidity, that same trader is very likely to also use an algorithmic trading strategy that taps into both light and dark venues, seeking out liquidity while managing information leakage. That algorithm will certainly, through its smart order routing and dark venue connectivity, interact with high frequency flow throughout the life of the trade.

No Metrics, No Problem

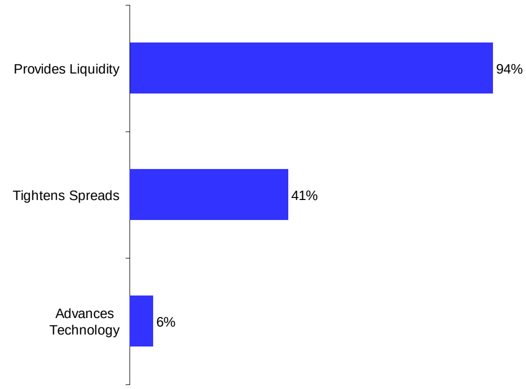
Exhibit 5
Why Are You Indifferent to The Presence of HFT?



Source: TABB Group

Traders are neutral about the presence of high frequency flow primarily because they do not have any data or any quantifiable metrics to demonstrate whether this flow is hurting or helping their cause (see Exhibit 5). They don't believe they can properly identify which orders are interacting with, or are impacted by HFT, and therefore cannot measure whether they are incurring additional trading costs. Just under one-third of head traders believe there is always a trade-off between the ability to find liquidity and the ability to side-step nefarious trading tactics, while another 25% view high frequency flow as "just liquidity" or a replacement for traditional market making activity. If I can't measure it, I can't worry about it. And oh, by the way, if you take that liquidity away from the marketplace or restrict it in some way, you may negatively impact my ability to trade in unforeseen ways.

Exhibit 6
If HFT is Good For Your Trading Style, Why?



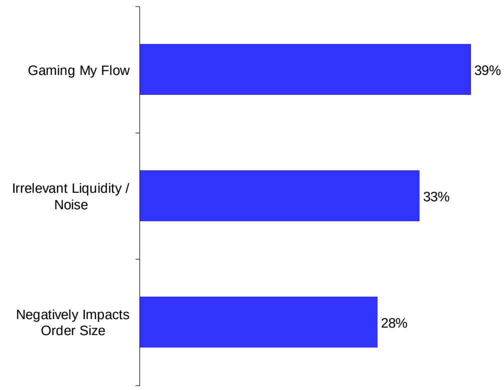
Source: TABB Group

Another segment of the trader universe, just under one-third, believes that HFT is good for their trading style because it increases the overall liquidity in the marketplace. These traders operate in a fragmented marketplace, with a myriad of dark pools. In the absence of upstairs sell-side traders, market makers and specialist firms, they believe that HFT adds available liquidity for these orders, tightening spreads and reducing execution costs (see Exhibit 6).

No, They're Gamers

There are a small number of buy-side traders (17%) who say that high frequency flow is negatively impacting their business because their orders are being gamed, that the HFT profits are an unnecessary liquidity tax on their clients' funds. These profits are generated through the use of extremely fast technology and co-location deals that traditional asset managers can neither justify nor afford. Some have suggested that the regulators should ban the co-location of HFT computers at the execution venue data center and eliminate the rebates that attract this type of flow and augment its profitability (see Exhibit 7).

Exhibit 7
If HFT is Bad For Your Trading Style, Why?



Source: TABB Group

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