CREDIT SUISSE

February 17, 2010

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

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

Dear Ms. Murphy:

Credit Suisse welcomes the opportunity to comment on the Regulation of Non-Public Trading Interest Proposal, Release No. 34-60997, published by the Securities and Exchange Commission (the "Commission" or "SEC") on November 13, 2009 (the "Proposal").

Credit Suisse Securities (USA) LLC ("Credit Suisse") is the United States broker-dealer subsidiary of Credit Suisse AG which has been operating continuously in the United States since 1932, when the First Boston Corporation was founded. As one of the world's leading banks, Credit Suisse Group provides its clients with private banking, investment banking and asset management services worldwide.

Credit Suisse owns and operates Crossfinder, which is the largest Alternative Trading System ("ATS") in the U.S.[1] Additionally, Credit Suisse is the top U.S. agency broker overall by volume traded in the S&P 500,[2] as well as the market share leader among U.S. brokers in algorithmic trading.[3]

Executive Summary

Credit Suisse believes that "dark pools" play a beneficial role in the U.S. market structure, allowing pension funds, mutual funds, and other large institutional investors to avoid emitting trading signals when executing large trades, and therefore helping to reduce their trading costs. Furthermore, we believe that Regulation ATS worked as intended, creating a healthy competition among market centers, which has reduced costs for all investors, resulted in innovative order types, and improved

[1] Rosenblatt Survey, November 2009; Tabb Survey, November 2009

[2] Bloomberg RANK, Credit Suisse was #1 in S&P 500 volume in 2009.

[3] Tabb Survey, November 2009; Greenwich Survey, May 2009

the reliability of our national market system. We believe that the solution to preventing "two-tiered" markets is simple: create a strong "fair access" provision in Regulation ATS, ensuring all investors have an equal opportunity to trade in all venues, whether light or dark.

Quoting/Fair Access Threshold. Regarding the Proposal, Credit Suisse supports lowering (or eliminating) the trading volume threshold for display of orders from 5% to 0.25% in Rule 301(b)(3) of Regulation ATS. Moreover, Credit Suisse believes the *fair access requirement*, Rule 301(b)(5), should be lowered from 5% to 0.25% (or eliminated) to provide all investors fair access to the full liquidity available through ATSs. Currently the regulation requires an ATS with 5% or more of the trading volume to comply with the fair access requirements on a security-by-security basis. Given the role ATSs have come to play in the equity markets, a security-by-security fair access threshold at such a high percentage of market share increases fragmentation and decreases investors' access to valuable sources of liquidity. The threshold should be lowered along with the order display threshold, and should be based on the total single-counted matched volume of the ATS in all NMS stocks.

Identification of ATS Trades. Credit Suisse strongly opposes the proposed real-time post-trade disclosure of the identity of ATSs. This proposal would create a new information stream that would disadvantage long-term fundamental investors while helping short-term professional, information-based traders. We believe this requirement takes the markets in precisely the wrong direction, hurting the pension funds and mutual funds that invest on behalf of millions of Americans.

Moreover, if the Commission determines to require post-trade identification of ATSs, we believe that requiring each ATS to have a unique market participant ID (MPID) is an inefficient way to address the Commission's policy goal of identifying ATS trade reports. Instead, the Commission should allow the industry and self-regulatory organizations flexibility in achieving an efficient operational response to such a regulatory mandate. Currently Crossfinder trades are flagged in the "memo" field of ACT with a message type that identifies to the Nasdaq TRF that it is a Crossfinder trade.

Indications of Interest. Credit Suisse supports requiring ATSs that send actionable indications of interest ("IOIs") to publish these IOIs as quotes. However, we do not believe that actionable IOIs should be treated as quotes for all purposes. As we discuss in more detail below, treating actionable IOIs as quotes for over-the-counter ("OTC") market makers raises a host of complex issues unrelated to dark pools and dark liquidity, and should be addressed in a separate proposal.

ATS Display Requirements and Fair Access

Lowering the ATS Quote Threshold. Regulation ATS contains rules that were designed to reduce fragmentation and two-tiered markets. The regulation requires ATSs that display their best priced orders to more than one person, and also achieve significant market presence, to publicly disseminate and make accessible their best order prices. Regulation ATS also provides market participants the full capability to trade in these significant ATSs on fair and non-discriminatory terms. Regulation ATS initially set the threshold for quote publication and fair access at a very high 20% level. The Commission subsequently dropped these thresholds to the still high level of 5%. The current proposal would drop the threshold for ATS publication of orders as quotes yet further, to .25%, while leaving the fair access threshold at 5%.

Credit Suisse supports lowering the threshold for order publication to .25%, or even eliminating it entirely. Recent history has shown that the barrier to entry for new ATSs is very low, and that ATSs can survive and prosper on a low level of volume. As a result, the number of ATSs has grown, substantially burdening marketwide best execution efforts and creating the risk of two-tiered markets. Just as the Commission recognized that the 20% threshold for displaying orders as quotes and for fair access was too high, the Commission should recognize that the current 5% standard for quotes is no longer appropriate for the current development of ATSs. Therefore, Credit Suisse supports the proposal to reduce this threshold to .25%, and urges the Commission to eliminate this threshold entirely.

Fair access based on objective criteria. In addition, Credit Suisse believes the Commission's intent of avoiding two-tiered markets is likely to be undermined unless the fair access requirement in Rule 301 (b)(5) is lowered along with the threshold for the order display requirement. We believe the SEC should require fair and non-discriminatory access for all ATSs that hit the lowered threshold of 0.25% of aggregate volume as a percentage of all NMS stocks, so that no investors can be excluded from important trading venues.

Critics of fair access argue that they should be allowed to choose who they trade with in order to avoid certain types of investors. We would note that the current fair access rule allows ATSs to develop objective criteria in order to avoid, as an example, bad actors, *as long as the standards for granting or denying access are reasonable, documented, and applied in a non-discriminatory manner.* We believe that enforcing an **objective criteria** standard would allow ATSs to keep "bad actors" out, thereby addressing the concerns of critics. Credit Suisse strongly believes that lowering the fair access threshold is just as important as lowering the display threshold in preventing the formation of a two-tiered market. In addition, the SEC should promulgate standards that would guard against anti-competitive behavior based on strategic business plans which exclude certain broker-dealers for competitive or capricious reasons.

Credit Suisse believes that the solution to preventing two-tiered markets is simple: enable all market participants that meet objective requirements the ability to trade in all ATSs. Any impediment to such unfettered access diminishes a broker-dealer's ability to fulfill its best execution duties. The Commission has previously noted the important role brokers play in seeking liquidity for their customers among competing market centers.[4] Brokers must be able to effectively perform this role in a market structured with competing trading venues. Thus the fair access threshold should be lowered (or eliminated) along with the order display threshold.

Regulation NMS effectively connected the nation's exchanges, to the benefit of all investors and brokers who execute trades on their behalf. A simple change in the fair access provision of Regulation ATS could do the same for dark pools.

Stock-by-stock rule vs. aggregate volume. While Credit Suisse supports lowering the trading volume threshold from 5% to 0.25%, Credit Suisse has always believed that applying these thresholds on a stock-by-stock basis is not practical or wise, and serves to undermine the intent of the rule.

For example, an ATS may routinely trade thousands of stocks, but only meet the volume threshold for one stock. Consequently, it would have to create the infrastructure to comply with the order display and fair access requirement for just that one stock. Rather than spend the time and resources, most firms have opted to limit their ATS trading in stocks that approach the current volume thresholds to avoid crossing the threshold, since incremental volume becomes difficult to justify in a cost-benefit analysis.

Similarly, for practical reasons, clients will not bother to connect to an ATS for just one stock. A significant investment in time and resources is required to negotiate an agreement, run a connection, and set up and test trading and clearing with an ATS. It is typically not worth the cost to connect to an ATS for access to a single stock.

Because of these practical and operational realities, applying the order display threshold on a stock-by-stock basis would not achieve the Commission's policy goals for a national market system. In the Regulation NMS adopting release, the Commission noted that among the SEC's objectives is to encourage market depth and liquidity.[5] If ATSs are able to avoid displaying quotes by limiting trading in particular stocks, the market will lose valuable insight into liquidity sources that would be available if the market share threshold was applied on an aggregate basis across all NMS stocks traded by the ATS.

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[4] Market Fragmentation Concept Release, Exchange Act Release No. 42450 (Feb. 23, 2000) ("In a market system with many competing market centers, brokers play a critical role in deciding where to route their customer orders").

[5] Regulation NMS Adopting Release, Exchange Act Release No. 51808 at p. 12 through 15 (June 5, 2005) ("Regulation NMS Adopting Release").

Consequently, Credit Suisse recommends that the Commission either eliminate the trading volume thresholds completely, or apply them on an aggregate basis, instead of a stock-by-stock basis. If the Commission is concerned that under our suggested approach an ATS could become a major marketplace for individual stocks without providing quotes or access in these stocks because the ATS's market share on an aggregate basis is below the threshold, the Commission could solve this issue by eliminating trading volume thresholds completely.

Post-Trade Transparency for ATS

Despite popular belief, ATSs must report all their trades immediately to the consolidated tape. Moreover, these trades are identified in real-time to FINRA. Also, trades that occur in dark pools are subject to OATS reporting and transparent to regulators just like transactions that occur on exchanges.

Although Credit Suisse supports increased transparency of ATS activity to regulators, and we are in favor of surveillance tools that encompass all trading venues, we do not believe that real-time post-trade disclosure of the ATS trading venue achieves any worthwhile purpose. In fact, Credit Suisse believes such disclosure is detrimental to long-term investors, such as institutional investors and their brokers who must avoid signaling their trading intentions to the marketplace.

We see no benefit to long-term fundamental investors from real-time post-trade ATS identification, but we do see a detriment. Short-term information-based traders – "order anticipators" in the parlance of the SEC's concept release[6] – might be able to troll through this new treasure-trove of real-time data and find small patterns that can be exploited at the expense of long-term investors. As the Commission has stated multiple times: "when the interests of long-term investors and short-term traders diverge" it is the Commission's responsibility "to uphold the interests of long-term investors."[7] Therefore, Credit Suisse recommends against immediate identification of an ATS trade, and instead recommends a delayed volume report, similar to the NYSE's weekly Program Trading reporting requirements.

Operational Difficulties in registering new MPIDs

The requirement for all ATSs to obtain and operate under a separate MPID would require more than a "de minimis" cost, as the Proposal states. The changes necessary to re-program internal and client systems are expensive and the transition could create operational risk. We believe that there are alternative methods of achieving the SEC's policy goal of post-trade ATS identification that could be more efficient. Thus, we believe that rather than requiring a separate MPID, the SEC

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[6] Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010).

[7] Regulation NMS Adopting Release at p.17 and 19.

should allow the industry and self-regulatory organizations flexibility to determine the most effective and efficient means to achieve this goal.

Actionable IOIs

The Proposal amends the definition of "bid" or "offer" in Rule 600(b)(8) to treat actionable IOIs as quotes. Generally, Credit Suisse supports the goal of Regulation ATS of allowing an ATS to choose whether to be dark or light, and, if the ATS chooses to be light because it displays orders to more than one other person, to require the ATS to publish those prices to all market participants. Credit Suisse also agrees with the Commission that actionable IOIs disseminated to others by ATSs should rightly be viewed as firm orders that should be published to all market participants.

However, Credit Suisse does not believe the way to achieve this Regulation ATS goal is by amending the definition of bid and offer in the quote rule – Rule 602 of Regulation NMS – at least without further consideration of the disparate effect of this approach. The quote rule only applies to certain specified parties, in particular, exchanges and broker-dealers that are OTC market makers.[8] The categories of entities that are required to quote represent the entities that were publishing quotes over 30 years ago when the quote rule was first adopted. However, many other entities publish quotes today, without being subject to the quote rule. This disparate treatment is an anachronism, and could lead to unintended results if it is not taken into account as the SEC contemplates treating actionable IOIs as quotes. Specifically, broker-dealers that are not OTC market makers would be permitted to continue using actionable IOIs without publishing them. We believe this disparate treatment based on a broker-dealer's antiquated quote rule status would likely discourage liquidity-providing broker-dealers from trading once they reach the volume level that triggers OTC market maker quote requirements. This could lead to a less liquid and more volatile market.

In addition, we believe that treating actionable IOIs as quotes for parties other than ATSs raises a host of complex issues unrelated to dark pools and dark liquidity, and should be addressed in a separate proposal.

[8] Through Rule 301(b)(3) of Regulation ATS, ATSs also have quoting obligations if a market share threshold is crossed.

Conclusion

Credit Suisse believes that all investors should have an equal opportunity to access all trading centers, and investors should not be excluded for capricious reasons. ATSs should only be able to deny access to investors based on standards that are reasonable, documented, and applied in a non-discriminatory manner. Fair access to the many light and dark venues operating under Regulation NMS would create a marketplace where all buyers and sellers have the maximum opportunity to interact, thereby leading to more efficient markets.

We believe that "dark pools" play a beneficial role in U.S. market structure, and that a strong "fair access" provision would ensure a vibrant, healthy, competitive marketplace, where exchanges and dark pools must compete on technology and techniques to the benefit of all investors.

Respectfully submitted,

Dan Mathisson
Managing Director
On behalf of Credit Suisse Securities (USA), LLC

cc: Hon. Mary Schapiro, Chairman
Hon. Kathleen L. Casey, Commissioner
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Paredes, Commissioner
Mr. David M. Becker, General Counsel and Senior Policy Director
Mr. Robert Cook, Director, Division of Trading and Markets
Mr. James Brigagliano, Deputy Director, Division of Trading and Markets
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