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ASSENT

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington D.C 20549-1090

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OFFICE OF THE SECRETARY

February 19, 2010

Dear Ms. Murphy:

Re: File No. S7-27-09;
SEC Release No. 34-60997 (the "Release")

Assent LLC, a registered broker-dealer affiliate of SunGard Data Systems Inc., submits this comment letter in response to the November 13, 2009, proposal of the Securities and Exchange Commission ("SEC" or the "Commission"), entitled "Regulation of Non-Public Trading Interest," to amend the regulatory requirements that apply to non-public trading interest in NMS stocks, including "dark pools" of liquidity.

Assent LLC is an electronic broker-dealer with significant experience in providing its customers with sponsored access to U.S. equity markets, smart order routing to both "dark" and visible market centers, and algorithmic trading tools. Assent also operates an Alternative Trading System ("ATS"), known as the Assent ATS, which constitutes a "dark pool," as that term is used in the Release, as the Assent ATS does not publicly display quotations in the consolidated quotation data.

The Proposed Post-Trade Transparency Will Lessen Competition

Assent believes that the proposal to require the real-time publication of the identity of the dark venue matching a trade will result over time in fewer dark pools and lessen competition in the market. Markets tend to be natural monopolies where volume begets volume, and trading migrates to the deepest pools of liquidity in a symbol. As such, Assent believes that the proposal will concentrate market share in the hands of existing large dark venues, create more difficult operating conditions for the smaller dark venues, and significantly raise the barriers to entry for new dark pool entrants.

The Commission's calculations indicate that dark trading represented 7.2% of all trading in NMS securities in Q2 2009. This statistic confirms the presence of a significant proportion of market participants that (a) attach positive value "dark" trading, and (b) have either explicitly or implicitly directed or consented to their orders trading in a "hidden" market. These market participants choose to do so for a variety of reasons, including the potential for price and/or volume improvement over that available in the displayed markets, but also the ability to not show their trading intention to the wider market. In return for this benefit, the dark participant faces explicit and implicit costs both in the form of lost pricing rebates for passive orders placed on displayed venues, and in the inability to contribute to the NBBO for the security. By removing post-trade anonymity for dark trading venues, the Commission is removing one of the main benefits to dark trading.

We believe that identifying dark venues in the manner proposed could lead to post-trade data being used as "synthetic" pre-trade transparency of dark pools for venue selection. In other words, smart order routing services and algorithms will base routing decisions on post-trade data for dark pools. We believe that this will have a polarizing effect on dark pool volumes; large dark pools are rewarded with even more liquidity, which in turn drains liquidity away from smaller dark pools. A probable outcome of this proposal, therefore, is reduced competition as dark trading volume becomes increasingly concentrated in a small number of "super pools" while smaller, independent dark pools will lose market share and face potential business failure. The polarization will also act as a significant barrier to entry to potential new entrants, further suppressing innovation and competition.

The increased trade-by-trade transparency proposed will allow market participants to quantify precisely the price and/or volume improvement benefits of connecting to, and trading on, a particular dark venue. Contrary to the Commission's assertions, this may actually lead to increased adoption of dark trading for participants who would be able to build clear business cases for trading in the dark, based on published empirical data.

Despite the foregoing, Assent accepts the need for improved accuracy of trading data from dark trading venues. We believe that this requirement is best met through aggregated end of day reporting which would provide such transparency without creating many of the associated side-effects identified above.

The Proposal regarding Actionable IOIs Will Be Easily Circumvented

The Commission estimates that only 11 of the 29 dark pools considered in its analysis currently disseminate actionable IOIs. The Assent ATS does not disseminate aciotnable IOIs and therefore would not be directly impacted by these proposals.

As the Commission correctly observes, the IOI is a mechanism for alerting trading participants (including other market centers) of the presence of an executable order that the sending venue cannot match internally. The selection of the IOI message is a matter of convenience and suitability rather than design. We would also encourage the Commission to provide the industry with a more detailed and definite description of an "actionable IOI" than currently presented. For example, can an IOI message that simply identifies the symbol and no other order details be considered an actionable IOI?

A suitable - if less efficient - substitute for the IOI is the immediate-or-cancel ("IOC") order used by some ATSs and broker-dealers offering "dark aggregation services" including Assent. In many ways the informational content of the actionable IOI and IOC are identical; they both contain symbol, price, side and quantity. The main difference between executions arising from an IOI order versus an IOC order is the venue on which the trade takes place; IOIs attract executions towards the *sender* while IOC generate trades at the *recipient.*

If the proposed amendments were to take effect, Assent believes that the majority of IOI traffic will simply be converted into exempt IOC order traffic. This will simply re-distribute trading from the sender to receiver, but will have little overall net effect on dark trading.

Lowering of the ATS Display Obligation Threshold Will Have Little Effect

We believe that the proposed amendments to the display requirements of Rule 301(b)(3) in Regulation ATS will not achieve the Commission's stated goals for three reasons:

1) As the Commission identifies, only 38% of dark pools (11 out of the 29) in operation use actionable IOIs, and would therefore even be considered for a display obligation in its current form.

2) The rule is written to be applicable to individual securities, allowing venues to "go fully dark" on a symbol-by-symbol basis. Since liquidity is attracted to liquidity, "going dark" may even serve to increase the attractiveness of a particular dark trading venue as this action demonstrates to subscribers that it has achieved a significant market share in that security.

3) It is increasingly common for a single broker-dealer entity to operate multiple dark venues. This creates the potential for broker-dealers to migrate or manage trading volume between different ATS operations to circumvent this rule.

   For example, consider a broker-dealer which consistently captures 10% market share of trading in stock XYZ. The broker-dealer decides to set up two dark trading venues – A and B – and trade XYZ stock exclusively on one of the two venues in rotation; January, February and March the stock trades on ATS A, switching to ATS B for April, May and June. In neither ATS would the broker-dealer have a display requirement, since it is breaching the 0.25% market threshold in only 3 out of any 6 month period (compared to the 4 out of 6 required by the rule).

In the cost analysis sections of the proposal, the Commission identifies that there would be programming costs borne by dark pools which breach the display threshold and must build a market data distribution technology to comply with ATS display obligations. We believe that – given the range of cost-free alternatives outlined above – it is unlikely that any dark venue will be willing to undertake the technology investment and will therefore simply seek to change their arrangements for trading in effected securities to avoid display. For this reason, we do not believe that the proposal as presented will have the outcome as described by the Commission.

* * *

In summary, Assent believes that the proposal to publish the identity of dark pools in real-time will decrease overall market competition and lead to a concentration of liquidity into a small number of "super pools." We further believe that the other proposals can be easily circumvented and will therefore have a muted effect on overall dark market structure.

Assent appreciates the opportunity to express its views on the Commission's proposal. If Assent can be of further assistance to the Commission or the SEC Staff on this Release, please do not hesitate to ask.

Respectfully Submitted,

Christopher Lees
Vice President
Assent LLC