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Via Email:*rule-comments@sec.gov*

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File Number SR-NASDAQ-2009-070
Auto Cancellation of Certain Market Orders

Dear Ms. Murphy:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment on proposed amendments to NASDAQ Stock Market LLC ("NASDAQ") Rule 4571 that will cancel under certain conditions any portion of most market orders that would execute at a price that is more than $0.25 or 5 percent worse than the national best bid and offer ("NBBO"). NASDAQ explains that the proposed rule change is designed to protect market participants by reducing the risk that market orders (also called unpriced orders), will execute at prices that are significantly worse than the NBBO. While there is an appreciation for the concerns raised by NASDAQ, WFA writes this brief comment letter to question whether an exchange-by-exchange approach is the best way to address the issue. There is also a real possibility that such a rule change could bring a degree of gamesmanship into the marketplace that could be worse than the current state without the rule. The Securities and Exchange Commission ("SEC") should review the rule closely to determine if it enhances marketplace uniformity.

WFA consists of brokerage operations that administer over $900 billion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states. Thousands of orders on its behalf are routed daily to market venues such as NASDAQ.

The primary issue raised by the NASDAQ proposal is that it runs contrary to general principles underlying Reg NMS. The concept of establishing a national market system was to have multiple trading centers through ECNs and exchanges where the market centers could compete on services and as a result provide lower fees. The proposed amendments to Rule 4571 would establish that for market orders executed on NASDAQ and any part of that order routed to other market centers, prices that are more than $.25 or 5% away (whichever is worse) from the NBBO at the time the order was submitted will get cancelled automatically. Those details raise the question of whether we want marketplaces to compete on the issue of when market orders will be cancelled when they move away from the market price. The SEC has already approved one exchange to implement a rule to cancel such orders when they move $.50 (or 5%) away from NBBO. Some exchanges now make no allowances for such market movements. Another exchange might decide in the future that the right approach is $.25 or 10% away. With market changes happening today in milliseconds throughout the trading day, one can envision a marketplace that quickly devolves into an "arms race" of trading systems designed to game a provision whose intent is to protect retail investor market orders. Even without gamesmanship, investor orders could still receive differing executions as varied rules are applied to their market orders. Viewed as a whole, the proposed amendments by NASDAQ invite the SEC to review the need for uniformity on key market principles such as the automatic cancellation of certain orders.

As important an issue as uniformity is, it is equally important that there be a real need for a rule cancelling market orders. Anecdotally, it is believed that the average retail customer market order is 400 shares. It is probably unrealistic for investors to expect that NBBO prices, which are often based upon 100 share sizes, remain available for the entire trading process of the average size order. It would seem that only in rare, extreme market conditions would substantial portions of the average size order need the benefit of the NASDAQ proposed amendments. With no need for such a rule, marketplaces could compete on offering the best price and not on issues such as short sales or cancelling market orders.

There is also the possibility that the proposed amendments could increase the potential for litigation. With different execution rules in different markets, clients might view the routing of an order as a cause of action when errors happen or an execution occurred on an exchange that does not cancel orders or cancels them only when they exceed a different amount or percentage. If there is a need for a rule like the amendments to NASDAQ Rule 4571, it should be uniform across all registered exchanges.

We trust that these comments will assist you in your review of the proposed rule amendments. Please feel free to contact us if you wish to discuss this letter.

Very truly yours,

Ronald C. Long
Director of Regulatory Affairs

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