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March 5, 2013

Via Securities and Exchange Commission electronic submission

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Executive Summary:

SR-NASDAQ-2013-014 (the "Proposal") from the NASDAQ Stock Market ("NASDAQ") continues a trend, whereby Exchanges exercise aspects of brokerage discretion in order execution through order routing functionality without corresponding fiduciary requirements with respect to Regulation Best Execution, under the Securities and Exchange Act of 1934, as amended (the "Act"). Secondly, the Proposal increases complexity with no clear benefit to market participants, who already have access to such strategies from brokerage firms, which have a fiduciary responsibility with respect to order execution, including adherence to Regulation Best Execution, under the Act. Lastly, the Proposal demonstrates how NASDAQ and other exchanges introduce material changes to the liquidity structure of the market system through their routing tables under the heading of order innovation. We believe that these innovations should be carefully reviewed with respect to the goals of the National Market System ("NMS"). We urge the Securities and Exchange Commission ("SEC" or "Commission") to evaluate three aspects of exchange provided algorithmic order types:

1) COMPETITION: Do algorithmic order types give exchanges an unfair advantage in competition with broker-dealers offering like services under more rigorous fiduciary requirements for execution quality?
2) COMPLEXITY: What is the impact of these order types with respect to increasing complexity in the market structure and what is the impact on market efficiency, transparency, trust amongst market participants in their markets and cost of trading?
3) MARKET STRUCTURE: What are the implications of these order types with respect to changing the fabric of the National Market System with respect to liquidity a) being systematically withheld from inter-exchange routing, or b) being routed from exchanges to dark pools? If the SEC does not believe that Exchanges should be responsible for routing orders for execution to the best Protected Quote to support NBBO, who is?

Most of these questions fall under the unfinished business of the SEC's 2010 Concept Release on Equity Market Structure[1]. Until these important questions are answered we believe that the Commission should deny exchange proposals for new order type rules. Further, the Commission should review algorithmic order types that have already been approved with a mind toward simplifying the expression of order interest and reinforcing the NMS framework. We appreciate the Commission's consideration of our full comments, which follow.

Respectfully,

Eric Pritchett
Chief Executive Officer

[1] See http://www.sec.gov/rules/concept/2010/34-61358.pdf

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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: full comments on SR-NASDAQ-2013-014

Ms. Murphy,

Potamus Trading LLC ("Potamus")[2] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or the "Commission") on the NASDAQ Stock Market ("NASDAQ") Proposed Rule Change SR-NASDAQ-2013-014 (the "Proposal"), which amends Rule 4758 by adding certain order routing functionality ("New Routing") to the NASDAQ System. The Proposal is dated February 6, 2013[3].

As a preamble to the remainder of these comments it should be known that Potamus is broadly supportive of electronic markets and electronic (including algorithmic) trading. We believe that the on-going evolution in automation of the core functions of market connectivity, order and quote communication, order matching, order routing, market-making, trade reporting, clearing, and settlement functions collectively make our markets more efficient and effective for all market participants, while also reducing the cost of trading. We believe that market participants are best served by having a variety of trading venues to choose from, including exchanges, Alternative Trading Systems ("ATSs" or "Dark Pools"), and trading over-the-counter ("OTC") with dealers providing liquidity directly to their orders. Our decision to comment on this proposal should not be viewed by the Commission as a criticism that is particular to the NASDAQ Stock Market ("NASDAQ"). While our comments are obviously directed at this particular Proposal, we are attempting to voice a set of concerns that apply broadly to exchanges providing algorithmic order types. Specifically we are concerned with how proposals for new rules relating to algorithmic order types impact competition, increase complexity, and change the market structure.

The SR-NASDAQ-2013-014 Proposal (the "Proposal") from NASDAQ continues a trend, whereby Exchanges exercise aspects of brokerage discretion in order execution through order routing functionality without corresponding fiduciary requirements with respect to Regulation Best Execution, under the Securities and Exchange Act of 1934, as amended (the "Act"). Secondly, the Proposal increases complexity with no clear benefit to market participants, who already have access to order routing strategies provided by brokerage firms, which are appropriately endowed with a fiduciary responsibility with respect to order execution, including adherence to Regulation Best Execution, under the Act. Lastly, the Proposal demonstrates how NASDAQ and other exchanges, introduce material changes to the liquidity structure of the market system through their routing tables under the heading of order type innovation. We believe that these innovations should be carefully reviewed with respect to the goals of the National Market System ("NMS").

[2] Potamus Trading LLC is a Registered Broker-Dealer and member of NASDAQ, FINRA, and SIPC. The firm provides electronic execution services, including algorithmic execution, low-latency trading, smart order routing, and OTC liquidity services.
[3] SR-NASDAQ-2013-014 on February 6, 2013; see http://www.sec.gov/rules/sro/nasdaq/2013/34-68839.pdf

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COMPETITION

With respect to competition we believe that Exchanges offering algorithmic order types are competing with broker-dealers offering like services in the form of algorithmic execution services, but without the same fiduciary obligations to customers. We believe that this corrodes the distinction between the fiduciary responsibility of Best Execution and the important, but more mechanical exchange obligations to route orders in accordance with the Order Protection Rule (Rule 611) of Regulation NMS,[4] under the Act. In Regulation NMS, the SEC has the following to say about Rule 611 and specifically its relationship to the broker-dealers' best execution obligations:

> The Commission continues to emphasize that adoption of Rule 611 in no way lessons a broker-dealer's duty of best execution. A broker-dealer has a legal duty to seek and obtain best execution of customer orders. According to the Report of the Special Study of Securities Markets, 'the integrity of the industry can be maintained only if the fundamental principle that a customer should at all times get the best available price which can reasonably be obtained for him is followed.' A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.
>
> The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, i.e. at the best reasonably available price. The Commission has not viewed the duty of best execution as inconsistent with the automated routing of orders or requiring automated routing on an order-by-order basis to the market with the best-quoted price at the time. Rather, the duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders. Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices. In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.
>
> The protection against trade-through required of trading centers by Rule 611 undergirds the broker-dealer's duty of best execution, by helping ensure that customer orders are not executed at prices inferior to the best protected quotations. Nonetheless, the Order Protection Rule does not supplant or diminish the broker-dealer's responsibility for achieving best execution, including its duty to evaluate the execution quality of markets to which it routes customer orders, regardless of the exceptions set forth in the Rule.[5]"

The Commission's own language very clearly states that the Commission views Rule 611 as a compliment to and not a replacement for broker-dealer best execution obligations. This plainly distinguishes the role of the broker-dealer from the role of the exchange, including scenarios that take algorithmic order routing into account. An exchange that provides a routing strategy that adheres to Rule 611 is not providing a best execution service simply because it does not violate Rule 611. Now turning to the language used by NASDAQ in SR-NASDAQ-2013-014:

[4] Regulation NMS, Release No. 34-51808; File No. S7-10-04 http://www.sec.gov/rules/final/34-51808.pdf .
[5] Regulation NMS, Release No. 34-51808; File No. S7-10-04, Section II(B)(IV), page 159-160.

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The purpose of the proposed rule change is to attract additional business to and enhance the functionality offered by Nasdaq by providing additional optional outbound routing services. Most equities exchanges today provide routing services and the Exchange offers a variety of routing strategies. Currently, Rule 4758, Order Routing, describes the order routing process and states that all routing shall be in compliance with Rule 611 of Regulation NMS under the Act. Furthermore, it enumerates Nasdaq's routing strategies: DOT, DOTI, STGY, SKNY, SCAN, SKIP, TFTY, MOPP, SAVE, SOLV, LIST and CART[6].

According to Proposed Rules 4758(a)(1)(A)(xii) and 4758(a)(1)(A)(xiii), this litany of algorithmic order types is to be joined by QDRK and QCST. However, QDRK and QCST are designed to systematically route flow from NASDAQ to "destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. 'dark venues' or 'dark pools').[7]" This means that NASDAQ will take on discretion in order routing decisions to market centers that are not displaying Protected Quotes for execution. This function requires discretion under Regulation Best Execution, not merely adherence to Rule 611.

Managing this type of strategy on behalf of the sender of an order under the guise that this is a simple exchange order is disingenuous; this type of execution strategy is actually a complex algorithmic execution strategy that requires continuous brokerage discretion to properly oversee. For instance, a modern algorithmic execution strategy that includes an order routing component provided by an executing broker comes with obligations with respect to best execution that include broker discretion in managing the routing table on relatively high frequency timescales that react to market and market center conditions.

With respect to the Proposal, this leaves us in one of two unacceptable situations with respect to an Exchange managing an algorithmic order type that is meant to replace a brokerage provided algorithmic execution for order routing, as follows:

A) <u>Exchange Uses Brokerage Discretion</u> – Modern discretionary timescales for such an algorithm can't be accommodated in the exchange order type description unless the exchange is dynamically using execution discretion to adjust the route throughout the trading day[8]. We believe that the timescales necessary to alter an Exchange rule, like an order type, fall short of meeting the standard normally expected of an executing broker managing such an execution strategy. This type of strategy normally requires a fiduciary to manage.

B) <u>Exchange Uses "SRO" Authority</u> – NASDAQ's Proposal suggests that algorithmic execution through an exchange provided order type that does not violate Rule 611 is somehow equivalent to algorithmic execution provided by an executing broker that has the fiduciary duties associated with Best Execution obligations. We believe that Rule 611 falls short for an Exchange to offer this type of routing service. Further, if an Exchange relies on its rulemaking/amending process to alter a routing strategy (to avoid using brokerage discretion), the timescales for adjustment to market conditions are woefully inadequate for modern electronic markets.

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[6] SR-NASDAQ-2012-059, pages 3-4.
[7] SR-NASDAQ-2012-059, page 4.
[8] Based on market volume, volatility and other factors that change from day to day and even intraday, broker-dealers offering algorithmic order routing have to alter routing to continue to perform under best execution requirements. Static order routing tables or even tables that are updated daily are well out of date. Depending on the customer requirements, Potamus Trading's order router constantly monitors order response time and execution quality across a number large number of candidate dark pools and makes real time adjustments to the routing tables. Some such decisions can take effect on millisecond timescales from the time problems are detected.

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In case there is any doubt that this is meant to be a replacement technology, NASDAQ makes the connection clear in Section 2(A) of the Proposal, saying, "**Specifically, the two new routing strategies will provide market participants with greater flexibility in routing orders without developing order routing strategies on their own**." Exchanges are not in a position, and should not be allowed by the SEC to assume the position, of the executing broker on any order. Further, no broker-dealer should be allowed to meet their fiduciary responsibilities for best execution obligations by merely showing that they use exchange order types that do not violate Rule 611 for want of having to do the proper work of insuring the best order execution (including order routing) for their customer orders.

We applaud the Commission's Order disapproving SR-NASDAQ-2012-059 relating to the establishment of Benchmark Orders[9] on the basis of unfair competition with respect to application of the Market Access Rule[10], under the Act. In it's ruling, the Commission reasoned:

> In particular, the Commission does not find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission does not find that the proposed rule change is consistent with: (i) Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and not to permit unfair discrimination between customers, issuers, brokers, or dealers; and (ii) Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act.

This language applied specifically to NASDAQ gaining unfair advantage with respect to compliance with the Market Access Rule with respect to Benchmark Orders relative to a broker-dealer offering like services. The Commission wisely points out that an SRO reciting the Act itself along with the mere statement that its Proposal meets all of the recitals is not sufficient to justify new Rules. Specifically, the Commission said, "the burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder… is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements… is not sufficient.[11]" We believe this situation is becoming all too common in these SRO rule proposals, which are increasingly reaching the SEC without even attempting to seek comment prior to submission. For example, in the NASDAQ Proposal, under Section 2(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others, NASDAQ declares: "No written comments were either solicited or received."

We believe that SR-NASDAQ-2013-014 is not consistent with Section 6(b)(8) of the Act due to creating impediments to competition through unfair advantages that exchanges have with respect to providing like services (algorithmic order routing and specifically algorithmic order routing to Market Centers that do not display Protected Quotes) without being burdened by broker-dealer Best Execution[12] requirements, under the Act. We respectfully ask that NASDAQ explain how its adherence to Rule 611 allows it to take the leap that it is acceptable for it's order routing strategies, embodied by order types QDRK and QCST, to replace a member firm's fiduciary Best Execution

[9] The term is used here as it is defined in SR-NASDAQ-2012-059.
[10] SEC Rule 15c-5, Risk Management Controls for Brokers And Dealers With Market Access http://www.sec.gov/rules/final/2010/34-63241fr.pdf.
[11] In its ruling, the Commission footnotes 15 U.S.C. 78f(b)(5) and (b)(8).
[12] FINRA Rule 5310 governs members' best execution requirements.

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responsibilities for order execution (including order routing) by outsourcing the development of its own order routing strategies and capabilities. We would also like to know if the SEC supports this thinking and if so, is it prepared to simplify Regulation Best Execution to mean only an adherence to Rule 611?

COMPLEXITY

With respect to complexity, we believe the Proposal is a continuation of the prolific growth in both the number and the complexity of exchange order types. In general, we believe that complexity makes markets less transparent and less efficient and therefore, hampers many of the goals of Section 6(b)(5) of the Act. In particular we believe that market complexity tends to erode the trust and confidence that retail and institutional investors have in the mechanics of the marketplace.

While no single rule tips the balance of complexity from one paradigm to the next, the Commission – until its recent ruling against NASDAQ's Benchmark Order Proposal (SR-NASDAQ-2012-059) [13] – has been very accommodative of Rule proposals relating to order types proposed by NASDAQ, DirectEdge, BATS Global Markets, NYSE ARCA and the other U.S. equity exchanges (together, the "Exchanges"). Each order type has an apparent justification in isolation, but as a whole the sheer number of order types available is harming the markets and increasing the cost of test and quality assurance amongst the brokerage community.

Further, we see more and more SRO Rule Proposals finding their way to the SEC without first seeking written comments from members. SRO business models have evolved into for-profit organizations that often compete directly with their membership for certain services. This creates the awkward situation whereby the SRO is making rules and policing the rules, even as it acts as an active competitor with broker-dealers that are subject to its rules and oversight. Looking at SOR rule making proposals, increasingly they provide only drab comments claiming that every new rule helps to perfect the market to the benefit of all participants. There is typically no attempt to give concrete evidence or supporting data to support the claims made by the rule proposals. Another dubious practice involves citing that "other exchanges" already offer "similar functionality", which has been "submitted to the SEC" for review. This NASDAQ Proposal has all of these features.

The SEC doesn't seem to be interested in challenging the majority of these SRO rules and the attendant claims that all these rules improve the markets. Meanwhile, professional traders, trading technologists and other industry participants have complained to the SEC[14] directly about the proliferation of exchange order types. Conferences, such as the one hosted by Georgetown University on the U.S. Equity Market Structure last September, openly call for order type moratoriums. Senior executives from established broker-dealers have publicly called for the SEC to institute some sort of framework to review the merit of new and existing order types more strenuously[15]. Others from the broker-dealer community have openly expressed an even more worrying concern to Congress saying, "We wonder why someone is trying to make things more complex. Why do we need so many ways to express trading interest? Is there something else going on? It's a question that is troubling and we're not sure what the answers are[16]."

Such statements demonstrate the negative impact that complexity has on the confidence in the market as a whole. It is becoming a common view that complexity, including the proliferation of

[13] SR-NASDAQ-2012-059 on January 11, 2013; see http://www.sec.gov/rules/sro/nasdaq/2013/34-68629.pdf
[14] For example, see notes from the SEC Roundtable on market technology during fall 2012.
[15] For example, Sudhanshu Arya, Global Head of Liquidity Management Technology, for broker-dealer Investment Technology Group, told the SEC, "In isolation, most of these order types make sense, but the whole suite of order types actually presents a pretty huge challenge for us to actually test." He recommended that order types come under objective review of their actual utility based on a metric like the percentage of order volume that each actually handles.
[16] Testimony of Andy Brooks, Head of US Equities Trading, T. Rowe Price, before Senate Banking Committee.

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algorithmic order types, benefits the professional trading, high frequency trading, and proprietary trading segments of the market at the expense of retail and institutional segments. Whether this is true or not, it is an opinion that is taking hold to the detriment of the goals of the Act.

MARKET STRUCTURE

The U.S. Equity Market Structure risks becoming fragmented, as links between exchanges providing competing Protected Quotes vying for the national best bid and offer ("NBBO")[17] are severed with order type features. In the name of competition, Exchanges are increasingly making it less likely that they will route a marketable order from their Exchange to another Exchange that is offering the best Protected Quote (a.k.a. the NBBO). If strong links exist between exchanges, market participants and listed companies both gain the benefits of Exchange competition without risking real fragmentation that threatens market depth and liquidity, which support price discovery. When the market linkages start to be weakened, we expect to see destructive fragmentation, where access to the best competitive Protected Quote is less likely and price discovery is weakened. We believe this development is counter to the overall goals of market depth, liquidity, interconnection, and price discovery, all under Regulation NMS[18].

There are at least two trends in Exchange order types that contribute to fragmentation of the destructive sort. The first are algorithmic order types that manage non-displayed (i.e. dark) liquidity and post such liquidity pegged to the best bid or best offer at a given exchange. However, the liquidity is not accessible to investors directing marketable order interest to the exchange, including intermarket sweep orders ("ISOs") unless the exchange is forced to route the liquidity to another NMS exchange displaying a visible protected quote at NBBO. In this specific situation the exchange managing the hidden liquidity will execute the routable order against its dark liquidity tracking NBBO up to a limit specified by the originator of the order. In this way, one NMS exchange keeps orders from being routed to another NMS exchange by managing an Exchange Embedded Dark Pool[19] inside its own matching engine for the specific purpose of keeping orders from routing to the best Protected Quote in the National Market System. This allows one Exchange to keep another Exchange (competitor) from being rewarded for having liquidity at NBBO. An example of such an order type is NYSE ARCA's Tracking Limit Order[20], described as follows:

> A tracking limit order is an undisplayed, priced round lot that is eligible for execution in the tracking order process against orders equal to or less than the aggregate size of the order if interest is available at that price. Orders may be entered at any price. Orders will only execute at the NBBO. Incoming ISO orders will not interact with tracking orders[21].

We leave it to the diligent student to go research what the "tracking order process" is within the NYSE ARCA rule documentation. For the uninitiated, it is a process that occurs inside the exchange matching-engine. Our impression is that the functionality exists to provide an Exchange engineered work-around to certain aspects of the Regulation NMS order routing obligations of exchanges, which may also be unsavory for certain sophisticated traders. Another NYSE ARCA order type called "post no preference, blind" is also very interesting for its Regulation NMS work-around.

In addition to orders in the algorithmic "tracking" category, a growing number of Exchange order types are designed to systematically route orders away from Exchanges in favor of execution in Dark

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[17] SEC Regulation NMS definitions are intended here.
[18] See Regulation NMS, http://www.sec.gov/rules/final/34-51808.pdf .
[19] Exchange Embedded Dark Pool is our term for hidden liquidity managed on an Exchange. Hidden liquidity can be all or a portion of parent order interest.
[20] See, http://usequities.nyx.com/markets/nyse-arca-equities/order-types .
[21] See NYSE ARCA documentation at http://usequities.nyx.com/markets/nyse-arca-equities/order-types .

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Pools. This development sets the stage for Exchanges to become significant on-ramps for Dark Pools, even as Exchanges complain to Congress about Dark Pools in the U.S. Market Structure[22]. The majority of the largest Dark Pools are Affiliated[23] with broker-dealers who also hold sway with the Exchanges, as they are typically the largest Exchange members[24]. Historically broker-dealers have held sway in order routing decisions for agency orders, where they have clear fiduciary duties. They also decide when and how to direct their principal trading interest amongst Exchanges, which typically includes quoted market-making activity, as well as trading to exit exposures gained through OTC trading. Broker-dealer expertise and capital are also tapped by Exchanges through market-maker programs that incentivize the resting liquidity that draws trading interest to the Exchange. When a broker-dealer executes an order it acts as a fiduciary. When a broker-dealer posts trading interest as market-maker on an exchange, the broker-dealer is supervised by the Exchange. When a broker-dealer trades OTC, FINRA and the SEC supervise it. When an exchange routes an order that sweeps Dark Pools that are typically Affiliated with one of their largest Members and which don't have Protected Quotes – whose is providing oversight? Whose interests are being served? In this mess of conflicts, which typically exists between the largest Exchanges and the largest broker-dealers, how is the SEC insuring that orders are routed by Exchanges based on fair and equitable standards of trade?

NASDAQ's Proposal would introduce two more of these order types. From the Proposal, NASDAQ's description of the two order types is as follows:

> (xii) QDRK is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center[25].

In other words, QDRK routes your order simultaneously to NASDAQ and to one or more Dark Pools of NASDAQ's choosing. If NASDAQ and the Dark Pools that NASDAQ chooses to route to both fail to fill your order, remaining shares will be posted on the NASDAQ book as a Protected Quote. However, in the event that your order posts to the NASDAQ book as a Protected Quote and is immediately marketable because of a Protected Quote at another Exchange, we will not route your order for execution to that Exchange.

> (xiii) QCST is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS and to certain, but not all, exchanges. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center[26].

[22] Written statements of Joseph Mecane, EVP & Head of U.S. Equities, NYSE Euronext, and Eric Noll, EVP and Head NASDAQ OMX Transactional Services, prepared for Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Securities, Insurance and Investment December 18, 2012.
[23] FINRA definition of Affiliation is intended here.
[24] Measured by trading interest represented in either an agency or principal trading capacity.
[25] SR-NASDAQ-2013-014, page 2.
[26] SR-NASDAQ-2013-014, page 2.

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In other words, QCST is basically QDRK except that in addition to Dark Pools of NASDAQ's choosing the order will also be routed to "certain, but not all, exchanges" (count of the qualifying Exchanges being Affiliated with NASDAQ).

The Commission's accommodative posture with regard to these order types[27] encourages the Exchanges to continue to use their Self Regulatory ("SRO") power to introduce more of these complex algorithmic order types that alter aspects of the Exchange role in the NMS framework and risk a "Balkanization" of liquidity, as Exchange interconnection is weakened by severing the NMS routing functionality in the name of order type innovation.

CONCLUSION

In our view the SEC should temporarily suspend approval of Rules introducing new order types by Exchanges acting as Self Regulatory Organizations ("SROs") until it conducts a thorough review of order types that answers the following questions relating to order types and the Act:

1) COMPETITION: Do algorithmic order types give exchanges an unfair advantage in competition with broker-dealers offering like services under more rigorous fiduciary requirements for execution quality?
2) COMPLEXITY: What is the impact of these order types with respect to increasing complexity in the market structure and what is the impact on market efficiency, transparency, trust amongst market participants in their markets and cost of trading?
3) MARKET STRUCTURE: What are the implications of these order types with respect to changing the fabric of the National Market System with respect to liquidity a) being systematically withheld from inter-exchange routing, or b) being routed from exchanges to dark pools? If the SEC does not believe that Exchanges should be responsible for routing orders for execution to the best Protected Quote to support NBBO, who is?

Most of these questions fall under the unfinished business of the SEC's 2010 Concept Release on Equity Market Structure[28]. Until these important questions are answered we believe that the Commission should deny exchange proposals for new order type rules. Further, the Commission should review algorithmic order types that have already been approved with a mind toward simplifying the market, reinforcing the NMS framework and reinforcing the exchange role within that framework.

We appreciate the Commission's consideration of our comments.

Respectfully,

Eric Pritchett
Chief Executive Officer

cc: Chairman Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Tray A. Paredes
Commissioner Daniel M. Gallagher

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[27] BATS Exchange alone boasts of having over 2,000 order types according to comments made by its Chief Operating Officer, Chris Isaacson, made to attendees of the annual meeting of the Security Traders Association in Washington, D.C. in September 2012.

[28] See http://www.sec.gov/rules/concept/2010/34-61358.pdf