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21 March 2012

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

Re: File No. SR-NYSE-2011-55 and SR-NYSEAMEX-2011-84

Proposal to Establish a Retail Liquidity Program to Attract Additional Retail Order Flow to the Exchange – Filing of Partial Amendment No.2

Dear Ms. Murphy,

CFA Institute welcomes the opportunity to respond to the Securities and Exchange Commission's (SEC's) solicitation of comments on the NYSE's notice of filing of partial amendment no.2 to its *Proposal to Establish a Retail Liquidity Program to Attract Additional Retail Order Flow to the Exchange* for NYSE-listed Securities and NYSE Amex Equities Traded Securities.

CFA Institute[1] represents the interests of investors and investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, and on the efficiency and integrity of global financial markets. CFA Institute promotes fair, open, and transparent capital markets, and advocates for investors' protection.

Summary of the Proposal

The NYSE has proposed the establishment of a non-displayed retail liquidity pool. Under the proposal, "Retail Member Organizations" (RMOs) could submit retail orders to the Exchange for execution against Retail Price Improvement orders (RPIs) entered by Retail Liquidity Providers (RLPs). RPIs would represent non-displayed trading interest that is better than the best bid or offer by at least $0.001.

[1] With headquarters in Charlottesville, Virginia, and offices in New York, Hong Kong, London and Brussels, CFA Institute is a global, not-for-profit professional association of more than 111,000 investment analysts, portfolio managers, investment advisors, and other investment professionals in 135 countries. Of these, more than 101,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.

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RLPs would either be Designated Market Makers or Supplemental Liquidity Providers. In return, RLPs would be eligible for execution fees that are lower than non-RLP rates. Similarly, RMOs would receive a credit for executions of their orders against the RPIs submitted by RLPs.

In Amendment No. 2, the Exchanges propose to make three changes to the retail liquidity program.

Firstly, the proposals modify the definition of a "retail order" such that it will exclude proprietary orders of Retail Member Organizations that result from liquidating a position acquired from the prior internalization of a retail order. In other words "retail orders" eligible for the program can only be agency orders.

Secondly, the definition of retail orders and retail price improvement orders will be amended to clarify that both may include odd lot, round lot, and part of round lot orders.

Thirdly, the definition of Retail Liquidity Identifier will be amended such that the identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest. The previously proposed definition of the Retail Liquidity Identifier did not contain these details. In short, this amendment clarifies the RPI "indication of interest" information to be disseminated on exchange data feeds.

Discussion

The proposed amendments to the retail liquidity program all relate to clarifications of existing definitions only. The amendments do not alter the substance of the proposal or any of its likely effects on market integrity. In essence, the proposal remains akin to a non-displayed retail internalization pool. Accordingly, these amendments do not address any of the concerns raised by CFA Institute in our letter dated November 30, 2011.[2]

To re-iterate our views, we believe that the NYSE's proposal will have adverse consequences for market integrity. Specifically, it does not reward market participants who assume the most risk, namely, those investors who display their trading intentions in the form of limit orders, which are the crucial building blocks of price discovery. Instead, the retail liquidity program allows Retail Liquidity Providers – a privileged class of market participant – to trade against incoming retail order flow without displaying their trading intentions. Accordingly, those RLPs who are not required to display their trading intentions will be in the advantageous position of being able to interact with marketable retail order flow, whereas those participants who do display their trading intentions would find their orders executed against highly informed order flow, the consequence typically known as unfair information arbitrage. The corollary is that investors will

[2] See http://www.cfainstitute.org/Comment%20Letters/20111130.pdf

submit fewer displayed limit orders. In turn, this will have a detrimental effect on public price discovery and market quality.

Whilst we recognize that Retail Liquidity Providers would be required to offer price improvement in return for their privileged status, thereby providing a benefit to the retail investor, we believe that this benefit is small relative to the wider cost to market integrity arising from the dis-incentive for investors to post limit orders. To reiterate, these limit orders are the building blocks of price discovery, and by discouraging such orders, the proposal undermines the primary purpose of a securities exchange.

Additionally, by segmenting order flow in the manner proposed, the proposal may seem inconsistent with the principles of fair and non-discriminatory access to orders, which are fundamental underpinnings of the operation of an exchange.

We therefore urge the SEC to disapprove these proposals.

Concluding Comments

CFA Institute believes that price transparency is a core element of fair and efficient-functioning markets. Exchanges fulfill a key economic function in facilitating public price discovery; as such, they should be committed to practices that further transparency. These proposals do not adhere to these principles and, consequently, we urge the SEC to disapprove them.

If you or your staff have questions or seek clarification of our views, please feel free to contact either James Allen, CFA, at +1.434.951.5558 or james.allen@cfainstitute.org, or Rhodri Preece, CFA at +44.207.330.9522 or rhodri.preece@cfainstitute.org.

Sincerely,

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