SIFMA
Securities Industry and Financial Markets Association

May 1, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Exemptive Application Pursuant to Rule 611(d) of Regulation NMS: Print Protection Transactions

Dear Ms. Morris:

Pursuant to Rule 611(d) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act"), the Trading Committee of the Securities Industry and Financial Markets Association[1] ("SIFMA") requests that the Securities and Exchange Commission ("SEC" or "Commission") exempt Print Protection Transactions (as defined below) from Rule 611(a) (the Order Protection Rule) of Regulation NMS under the Exchange Act (the "OPR").[2] We believe that the proposed exemption, like the various exceptions to the OPR adopted by the Commission, is "narrowly drawn to prevent abuse," but would allow broker-dealers to continue to provide beneficial executions to orders that do not receive executions because they are not at the top-of-book ("TOB") in the market in which they are displayed, but are priced superior to orders executed in other markets. As a result, the proposed exemption is "appropriate in the public interest, is consistent with the protection of investors,"[3] and should be granted by the Commission.

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[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 Fed. Reg. 37496, 37528 (June 29, 2005) ("NMS Release").

[3] Rule 611(d) of Regulation NMS under the Exchange Act.

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Order Protection Rule and Print Protection Transactions

Print protection is the mechanism through which broker-dealers may elect to execute an order at a price that is the same as or better than an execution in the same security on a different market. The ability of broker-dealers to offer print protection to orders will become more difficult when the OPR becomes effective. The OPR is intended to prevent trade-throughs of protected quotations in NMS stocks,[4] where a trade-through is defined as "the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer."[5] Under the OPR, broker-dealers will not be able to provide print protection to orders where the price is inferior to the national best bid or offer ("NBBO").

There are, however, certain instances in which orders in one automated trading center may be displayed at a price superior to quotations that receive executions in other automated trading centers, but are not executed because they are not at the TOB in the automated trading center on which they are displayed. For example, suppose Firm A represents an order to buy 1000 shares at $49.90, and it is displayed on Automated Trading Center X, which currently shows a TOB protected quote of $50. Automated Trading Center Y shows a TOB protected quote of $49.80 for 1000 shares. A broker-dealer wants to sell 2000 shares, and it sends an intermarket sweep order ("ISO") to sweep the TOB protected quotes across the various automated trading centers. The 1000 shares at $50 in Automated Trading Center X are filled, and the 1000 shares at $49.80 on Automated Trading Center Y are filled. However, the order represented by Firm A and displayed on Automated Trading Center X does not receive a fill, even though its $49.90 price is better than the $49.80 order executed by Automated Trading Center Y, because the $49.80 quote was the TOB in Automated Trading Center Y. Firm A wants to execute the displayed order but, depending on the new NBBO, giving the order a fill at $49.90 may violate the OPR. Under such circumstances, where superior-priced orders contribute to price discovery by being displayed in whole or in part, we believe that broker-dealers should be allowed to elect to execute these orders without violating the OPR.

Requested Relief

To preserve the ability of broker-dealers to offer print protection in the circumstances described above, we recommend that the Commission exempt such trades from the OPR. Specifically, we request that the Commission exempt from Rule 611(a) any trade-through caused by the execution of an order under the following circumstances ("Print Protection Transactions"):

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4 Rule 611(a)(1) of Regulation NMS under the Exchange Act.

5 Rule 600(b)(77) of Regulation NMS under the Exchange Act.

1. The order that would be the subject of a Print Protection Transaction is displayed in whole or in part on an automated trading center (as defined in Rule 600(b)(4) of Regulation NMS) that directly displays protected quotations (as defined in Rule 600(b)(57) of Regulation NMS);

2. An execution that triggers the Print Protection Transaction is reported by a transaction reporting plan (as defined in Rule 600(a)(32) of the Exchange Act) at a price that is inferior to the price of the Print Protection Transaction (the "Triggering Transaction")[6];

3. The Triggering Transaction is reported as qualifying for an exception for ISOs under paragraphs (b)(5) or (b)(6) of Rule 611;

4. The execution of the Print Protection Transaction must occur promptly after the Triggering Transaction;

5. The contra side of the execution of the order is provided by a broker-dealer who has responsibility for the order;

6. The Print Protection Transaction is available only up to an aggregate of displayed size and reserve size of the underlying order on the automated trading center; and

7. The broker-dealer has in place written policies and procedures reasonably designed to address the use and terms of Print Protection Transactions and, as part of the broker-dealer's periodic surveillance procedures under Rule 611(a)(2), will monitor to ascertain the effectiveness of such policies and procedures and take prompt action to remedy deficiencies in such policies and procedures.

The requested exemption would apply only to the execution of the Print Protection Transaction and would not apply to any subsequent trades effected by a broker-dealer. To avoid confusion in the market, we recommend that all Print Protection Transactions either should *not* be reported to the consolidated tape or, if reported, should be identified as exempted transactions using the appropriate trade modifier for OPR exceptions. We also are aware that the interaction between Regulation NMS and rules governing short sales is being considered separately, and we believe that, as part of that process, the SEC should clarify that these trades are exempted from any short sale price tests. This exemption would be available for broker-dealers to use at their election, and broker-dealers would not be required to provide print protection.

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6 In addition to the execution of inferior priced orders at the TOB in other trading centers, transactions executed at inferior prices in other trading centers generally may constitute Triggering Transactions. For instance, if a block trade is executed in another trading center at a price that is four (4) cents away from the NBBO, it would be consistent with the terms of this exemption for a broker-dealer to provide print protection down to three (3) cents away from the NBBO.

We believe that the benefits of the proposed exemption for Print Protection Transactions far outweigh any disadvantages. An exemption for Print Protection Transactions will facilitate the ability of broker-dealers to provide executions for displayed orders that are priced better than executions occurring in other markets. Allowing broker-dealers this exemption furthers the Commission's goal of promoting greater price discovery in the securities markets by encouraging, rather than discouraging, the display of limit orders. We also believe that the requirement that orders be displayed and the general requirement under the OPR that firms maintain policies and procedures reasonably designed to prevent abuse and ensure compliance with the OPR and its exceptions should alleviate concerns about the potential for abuse of this exemptive relief.

Conclusion

An exemption for Print Protection Transactions will facilitate the ability of broker-dealers to provide executions based on the superior prices of their orders relative to orders executed in other markets once the OPR becomes effective. Therefore, we urge the Commission to use its authority under Rule 611(d) of Regulation NMS to approve the proposed exemption for Print Protection Transactions.[7]

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If you have any comments or questions, please do not hesitate to contact me at 610.617.2624, or Ann Vlcek, Vice President and Associate General Counsel, SIFMA, at 202.434.8400.

Sincerely,

Jerry O'Connell
Chairman
SIFMA Trading Committee

cc: Chairman Christopher Cox, Securities and Exchange Commission
Commissioner Paul S. Atkins, Securities and Exchange Commission

[7] "[T]he Commission has determined that the most appropriate process to handle suggestions that specific types of transactions should be excluded from the coverage of Rule 611 is through its exemptive procedure set forth in paragraph (d) of the Rule. The extended implementation period for Regulation NMS will provide a full opportunity for the public to request specific exemptions that they believe are necessary or appropriate in the public interest and consistent with the protection of investors." NMS Release at 37528.

Commissioner Roel C. Campos, Securities and Exchange Commission
Commissioner Annette L. Nazareth, Securities and Exchange Commission
Commissioner Kathleen L. Casey, Securities and Exchange Commission
Erik R. Sirri, Securities and Exchange Commission
Robert L.D. Colby, Securities and Exchange Commission
David Shillman, Securities and Exchange Commission
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Steve Williams, Securities and Exchange Commission
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