MEMO# 23967

November 20, 2009

Draft ICI Comment Letter on SEC Flash Order Proposal

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TO: SEC RULES COMMITTEE No. 67-09
EQUITY MARKETS ADVISORY COMMITTEE No. 51-09
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 11-09
ETF ADVISORY COMMITTEE No. 39-09
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 30-09 RE: DRAFT ICI COMMENT LETTER ON SEC FLASH ORDER PROPOSAL

The Institute has prepared the attached draft comment letter on the SEC's proposal to eliminate the exception for "flash orders" from the quoting requirements of the Securities Exchange Act of 1934. The letter states that the Institute supports the proposal and shares the Commission's concerns relating to flash orders, most significantly, the potential impact on the public display of trading interest in general and on the specific orders that are flashed, as well as the possibility of the creation of a "two-tiered" market.

Comments on the proposal are due to the SEC on Monday, November 23. If you have comments on the attached draft letter, please provide them to Ari Burstein by e-mail at aburstein@ici.org or by phone at 202-371-5408 by COB Monday, November 23.

The draft letter notes that the Institute has long advocated for regulatory changes that would result in more publicly displayed quotes, greater order interaction and, in turn, more efficient trading. To the extent that flash orders may discourage the public display of trading interest, the letter states that this could be detrimental to the overall efficiency of the markets. In addition, the draft letter notes that the flashing of orders to market participants creates a risk that recipients of the information could act in ways that disadvantage the flashed order. The letter states that most mutual funds do not allow their orders to be flashed for this very reason, as the process of displaying orders to a select group of market participants could result in information leakage and, in turn, the frontrunning of orders. Finally, the draft letter states that the Institute appreciates concerns about the “free look” that flash orders provide to a select group of market participants and the creation of a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for listed securities. The letter states that information advantages, such as those provided by flash orders, should be banned.

The draft letter also discusses proposed broader changes to the current market structure. The letter states that while the Institute supports the Commission’s proposal, we believe the Commission should take a measured approach to the reform of the current market structure and ensure that there are no unintended consequences of reforms for mutual funds. The letter also states that any specific market structure issue, such as flash orders, cannot be viewed in a vacuum without also examining other market structure issues. The letter notes that the Institute will be commenting in much further detail on market structure issues in our comment letter on the Commission’s recent proposals relating to dark pools and other non-public trading interest.

Ari Burstein
Senior Counsel - Securities Regulation

Attachment
