

MEMO# 23973

November 23, 2009

ICI Comment Letter on SEC Flash Order Proposal

[23973]

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TO: SEC RULES MEMBERS No. 125-09
EQUITY MARKETS ADVISORY COMMITTEE No. 52-09
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 12-09
ETF ADVISORY COMMITTEE No. 40-09
CLOSED-END INVESTMENT COMPANY MEMBERS No. 55-09 RE: ICI COMMENT LETTER ON
SEC FLASH ORDER PROPOSAL

The Institute has filed a comment letter with the SEC on its 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.

The 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. Because 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 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 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. The letter states that information advantages, such as those provided by flash orders, should be eliminated.

The letter also discusses the proposed broader examination by the Commission of the current market structure. The letter encourages this examination, as it will allow the Commission to take a measured approach to the reform of the current market structure and ensure that there are no unintended consequences of reform. The letter also states that any specific market structure issue, such as flash orders, cannot be viewed in a vacuum. The letter notes that the Institute will be commenting in much further detail on market structure issues in our comment letters on the Commission’s recent proposals relating to dark pools and other non-public trading interest and any further reform proposals the Commission may make in the future.

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Senior Counsel - Securities Regulation

[Attachment](#)

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