

Here is a more detailed outline of the three SEC proposals :

### **1. Define “Bid” or “Offer” to Include Actionable IOIs**

The SEC is seeking to expand the definition of “bid” or “offer” under Reg ATS to include actionable IOIs. Under the proposed rule, an IOI would be considered as actionable if it *explicitly or implicitly* conveys all of the following information about available trading interests at the IOI sender:

- (1) symbol;
- (2) side (buy or sell);
- (3) a price that is equal to or better than the national best bid and offer (“NBBO”); and
- (4) a size that is at least equal to one round lot (100 shares).

In determining whether or not an IOI conveys this information, all of the facts and circumstances surrounding the IOI would be considered, including the course of dealing between the IOI sender and the IOI recipient. The release provides that an IOI may be part of a course of conduct in which the recipient has responded with orders to the sender and repeatedly received executions. With this information (both explicit and implicit), the recipient of the IOI can reasonably conclude that sending a contra-side marketable order responding to the IOI will result in an execution if the dark pool trading interest has not already been executed against or cancelled. **In this respect, the SEC considers actionable IOIs to be functionally quite similar to displayed quotations at the NBBO.**

Under Reg NMS, exchanges and market makers are required to publicly display their best-priced bids and offers. Accordingly, under the proposed amendment to the definition of “bid” or “offer”, exchanges and market makers would be required to publicly display the actionable IOIs that they send. The information to be displayed would include the specific limit price and size of the underlying order or other trading interest.

#### **Block Liquidity Exception**

*The SEC recognizes that some trading venues may use actionable IOIs to provide block liquidity. Hence, the SEC is proposing a further amendment to the definition of “bid” or “offer” under Reg NMS to exclude any IOIs for orders with a market value of at least \$200,000 that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least \$200,000.*

### **2. Reduction of Volume Threshold under Regulation ATS**

The SEC is also proposing to amend the order display and execution access requirements under Reg ATS. Specifically, the SEC is proposing to reduce the average daily trading

volume threshold that would trigger the order display and execution access requirements for an ATS, from 5% to 0.25%.

Under the proposed amendment, an ATS would be subject to the order display and execution access requirements if it: (1) displays subscriber orders to more than one person; and (2) during at least 4 of the preceding 6 calendar months, had an average trading volume of 0.25% or more of the aggregated average daily share volume for an NMS stock. Specifically, the ATS would be required to provide its best priced orders, displayed to more than one person, to a national exchange or national securities association for inclusion in the consolidated quotation data, if the 0.25% volume threshold is exceeded.

Under the proposed amendment, ATSs that send actionable IOIs would be required to comply with the order display and execution access requirements if the volume threshold of 0.25% is exceeded. In addition, the ATS would be required to make its quotes accessible in accordance with the standards established by the relevant SRO (self-regulatory organization) to which its best priced orders are provided.

#### **Block Liquidity IOIs Exception**

*Orders having a market value of at least \$200,000 that are displayed only to those who are reasonably believed to represent current contra-side trading interest of at least \$200,000 would not be subject to the proposed order display and access requirements.*

### **3.Real Time Disclosure of Individual ATSs in Trade Reports**

The SEC is proposing that last sale price information (*i.e.*, real time trade reports) collected by FINRA from each ATS would identify the ATS and be reported to the consolidated tape unless the trade is a large size trade with a market value of at least \$200,000.

The proposed Plan amendments would indirectly require ATSs to obtain a unique MPID (market participant identification) which is different from their sponsoring broker-dealers. This information would be included when reporting last sale information to FINRA for public dissemination.

#### **Current Status of the Proposal**

The Dark Pool Release specifically provides that an ATS which operates on a completely dark basis or only sends actionable IOIs in accordance with the Size Discovery IOI exception would not be subject to the order display and execution access requirements of Reg ATS.