

# Staff Guidance on Automated Quotations under Regulation NMS

**June 17, 2016**

The statements in this Staff guidance were prepared by and represent the views of the Staff. They are not rules, regulations, or statements of the Securities and Exchange Commission ("Commission"). Further, the Commission has neither approved nor disapproved this Staff guidance.

**For Further Information Contact:** Michael Ogershok, Attorney-Adviser, at (202) 551-5777, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549.

## I. Interpretation of Automated Quotation

The Commission issued a final interpretation regarding automated quotations under Rule 600(b)(3) of Regulation NMS on June 17, 2016.<sup>[1]</sup> The Commission's interpretation provides that, solely in the context of determining whether a trading center maintains an "automated quotation" for purposes of Rule 611 of Regulation NMS, the Commission does not interpret the term "immediate" used in Rule 600(b)(3) by itself to prohibit a trading center from implementing an intentional access delay that is *de minimis* – *i.e.*, a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange's quotations. Accordingly, the Commission's revised interpretation provides that the term "immediate" precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation unless such delay is *de minimis*.

The Commission's interpretation did not enumerate a specific threshold for the maximum permissible latency that could be imposed by an intentional access delay. The Staff believes that it would be useful to provide market participants, from time to time, more specific guidance with respect to the length of an intentional access delay that the Staff believes is likely to meet the *de minimis* standard articulated in the Commission's interpretation.

## II. Staff Guidance

The Staff believes that, consistent with the Commission's interpretation regarding automated quotation under Rule 600(b)(3) of Regulation NMS, delays of less than a millisecond are at a *de minimis* level that would not impair fair and efficient access to a quotation, consistent with the goals of Rule 611. The Staff's view is informed by the efficient operation of the markets and the geographic and technological latencies experienced by market participants. Today, a one millisecond intentional access delay is well within the current geographic and technological latencies already experienced by market participants when routing orders between trading centers. Accordingly, the Staff believes that such a delay would be *de minimis* and consistent with the Commission's interpretation of "immediate" as used in Rule 600(b)(3) of Regulation NMS.<sup>[2]</sup>

The Staff notes that the Commission's proposed interpretation included guidance reflecting a sub-millisecond standard. Though the Commission did not adopt that guidance as part of its final interpretation, the Staff notes that commenters on the proposed interpretation were divided on the

appropriateness of an intentional access delay but did not advocate for a different specific standard. Further, the Staff believes the sub-millisecond standard is a reasonable line to draw, as it is broadly consistent with the latencies experienced by market participants today when routing orders around the primary exchange data centers, and is well within the maximum geographic latencies experienced when routing orders to the most geographically remote exchange data center.<sup>[3]</sup>

The Staff acknowledges that market participants using the most sophisticated technology may today encounter access delays of substantially less than one millisecond when accessing the quotes of a single exchange whose data center is co-located with their own or located nearby. However, even the most technologically advanced market participants today encounter delays in accessing protected quotations of other “away” automated trading centers that can substantially exceed one millisecond, that either are transitory (*e.g.*, as a result of message queuing) or permanent (*e.g.*, as a result of physical distance). In today’s market environment, the Staff considers that intentional delays of less than a millisecond in quotation response times are *de minimis* in that they would not impair a market participant’s ability to fairly and efficiently access a quote, consistent with the goals of Rule 611. While the Staff believes that intentional access delays that are less than one millisecond are *de minimis*, that does not necessarily mean that all intentional delays that are one millisecond or more are not *de minimis*.

This guidance does not obviate the requirement for any proposed intentional access delay to be filed with the Commission as a proposed rule change, and it does not address whether any particular access delay would be approved by the Commission as consistent with the Commission’s interpretation regarding automated quotation under Rule 600(b)(3) of Regulation NMS, or as being not unfairly discriminatory, not an inappropriate or unnecessary burden on competition, and otherwise consistent with the Act.

As market conditions and technology evolve, the Staff will reevaluate this guidance to consider whether it remains appropriate and evaluate any concerns about effects on market quality, including price discovery, that warrant adjusting this guidance in the future.

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<sup>[1]</sup> See Securities Exchange Act Release No. 78102 (June 17, 2016) (File No. S7-03-16).

<sup>[2]</sup> As noted in the Commission’s interpretation, any intentional delay imposed in (1) executing an immediate-or-cancel order against its displayed quotation up to its full size, (2) cancelling any unexecuted portion of such order, or (3) transmitting a response to the sender of such order, should be added together in assessing compliance with Rule 611.

<sup>[3]</sup> For example, looking solely at latencies attributable to geography, a minimum one millisecond delay would be encountered at a distance of 186 miles. If the speed of light (in a vacuum) is approximately 186,282 miles per second, then over a millisecond, light would travel approximately 186 miles. In the real world of communications infrastructure, at which communications travel at less than the speed of light, a millisecond delay due to geographic distance likely would occur at shorter distances.