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February 11, 2011

Mr. Werner Bijkerk
Senior Policy Advisor
International Organization of Securities Commissions
Calle Oquendo 12
28006 Madrid
Spain

Re: Public Comment on Issues Raised by Dark Liquidity

Dear Mr. Bijkerk:

The Investment Company Institute (“ICI”) supports the International Organization of Securities Commissions’ (“IOSCO”) review of issues raised by dark liquidity. The consultation report (“Consultation”) issued by the Technical Committee’s Standing Committee on Secondary Markets (“Technical Committee”) raises a number of issues of importance to ICI members.

The ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (“ETFs”), and unit investment trusts (“UITs”).¹ The structure of the global securities markets has a significant impact on ICI members, who are investors of over \$12 trillion of assets. We are institutional investors, but invest on behalf of over 90 million individual shareholders.² U.S. registered investment companies and their shareholders therefore have a strong interest in ensuring that the global financial markets are highly competitive, transparent and efficient, and that the regulatory structure that governs the financial markets encourages, rather than impedes, liquidity, transparency, and price discovery.³ Consistent with these goals, we have strongly

¹ ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers.

² For more information on the U.S. registered investment company industry, *see* 2010 Investment Company Institute Fact Book at www.icifactbook.org.

³ The issues discussed in the Consultation impact all U.S. registered investment companies, including mutual funds, closed-end funds, and ETFs. For purposes of this letter, we refer to U.S. registered investment companies as “funds.”

supported efforts to address issues that may impact the fair and orderly operation of the financial markets and investor confidence in those markets and have long advocated for appropriate regulatory changes.⁴

The issues surrounding the trading of securities by funds and other institutional investors, including those involving dark liquidity, are no longer purely a domestic matter. Many funds utilize intricately linked global trading desks and must be concerned not only about the regulation and structure of the financial markets in the United States but also in other jurisdictions in which they trade. ICI therefore offers its assistance to the Technical Committee as it continues to examine the issues raised by the Consultation and their impact on the financial markets.

Our recommendations on the issues raised in the Consultation follow below.

I. Summary of Recommendations

- **Principle 1:** *The price and volume of firm bids and offers should generally be transparent to the public. However, where regulators consider permitting different market structures or order types that do not provide pre-trade transparency, they should consider the impact of doing so on price discovery, fragmentation, fairness and overall market quality.*
 - We generally support increasing pre-trade transparency of information about dark liquidity but urge regulators to examine any unintended consequences that may arise as a result of new requirements, particularly the impact on large orders executed by funds.
 - We strongly support exceptions provided to pre-trade transparency for large orders and caution against drafting any such exceptions too narrowly; we believe the benefits of exceptions outweigh any associated costs to the markets.
 - We support the principle of treating actionable indications of interest as firm public quotes that should be displayed.
- **Principle 2:** *Information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public. With respect to the specific information that should be made transparent, regulators should consider both the*

⁴ ICI has filed several letters directly addressing issues relating to dark liquidity. See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated February 22, 2010; available at <http://www.ici.org/pdf/24142.pdf> (SEC Non-Public Trading Interest Proposal); Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated April 21, 2010; available at <http://www.ici.org/pdf/24266.pdf> (SEC Concept Release on Equity Market Structure); and Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Directorate General, European Commission, dated February 2, 2011; available at <http://www.ici.org/pdf/24946.pdf> (European Commission Review of MiFID). For a comprehensive list of, and links to, ICI's key comment letters and statements on trading and market structure issues, see Appendix A.

positive and negative impact of identifying a dark venue and/or the fact that the trade resulted from a dark order.

- We generally support increasing post-trade transparency of information about dark liquidity but believe that exceptions to facilitate and ensure the efficient execution of large orders are critical.
- We do not support real-time, post-trade transparency of the identity of individual dark pools but do support such disclosure on a delayed basis (*i.e.*, at the end of the trading day, on a stock-by-stock basis).
- ***Principle 3: In those jurisdictions where dark trading is generally permitted, regulators should take steps to support the use of transparent orders rather than dark orders executed on transparent markets or orders submitted into dark pools. Transparent orders should have priority over dark orders at the same price within a trading venue.***
 - We strongly support efforts to provide incentives for market participants to use transparent orders and believe the time is ripe for regulators to examine the impact of certain undisplayed liquidity on price discovery.
 - We believe it is imperative that venues trading dark liquidity remain available to funds and that regulations overseeing these venues facilitate their continued use; we are concerned by suggestions that rather than incentivizing the use of transparent orders, regulators may choose to have only limited exceptions to pre-trade transparency.
 - We believe that dark liquidity in the form of broker-dealer internalized order flow should be examined and that further action should be taken to ensure that internalized orders receive best execution.
- ***Principle 4: Regulators should have a reporting regime and/or means of accessing information regarding orders and trade information in venues that offer trading in dark pools or dark orders.***
 - We believe it is important that regulators have access to accurate, timely and detailed information regarding dark liquidity.
- ***Principle 5: Dark pools and transparent markets that offer dark orders should provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed.***
 - We strongly support suggestions that dark pools or transparent markets offering dark orders ensure that market participants are provided with detailed explanations of information about how orders are handled and executed.

- ***Principle 6: Regulators should periodically monitor the development of dark pools and dark orders in their jurisdictions to seek to ensure that such developments do not adversely affect the efficiency of the price formation process on displayed markets, and take appropriate action as needed.***
 - We strongly support regulators having adequate arrangements in place to continue to examine the changes to market structure and to identify emerging issues in a timely fashion.
 - We are concerned about the breadth of the statement in the Consultation that a review by regulators of developments in this area could lead to a reduction of dark liquidity.

II. Funds Use of Dark Liquidity

As the Consultation notes, the global equity market structure has undergone significant changes over the past several years. Clearly, a primary driver and enabler of these changes has been the continual evolution of technologies for generating, routing and executing orders and related improvements to the speed, capacity and sophistication of the trading functions available to investors. Funds rely heavily on technology for the efficient execution of their trades.

Despite the improvements to the structure of the markets, challenges for funds remain when trading - posted liquidity and average execution size is lower, while the difficulty of trading large blocks of stock has increased. In many respects, these challenges have helped spur the expanded use of dark liquidity and the development of so-called “dark pools.”⁵

The Consultation notes a number of reasons why dark pools may be used by market participants including: to avoid information leakage; to minimize market impact costs; to facilitate the execution of large blocks; to ensure better control of an order; to protect proprietary trading information; to avoid algorithms or programs that seek to identify or “sniff” out dark orders used in transparent markets; to take advantage of the possibility of price improvement; and to minimize transaction costs.

All of these are examples of the benefits of dark liquidity to funds. Funds have long been significant users of dark liquidity and the trading venues that provide such liquidity. Most significantly, these venues provide a mechanism for transactions to interact without displaying the full scale of a fund’s trading interest. For ICI members that frequently must execute large orders, these benefits are particularly valuable because it lessens the cost of implementing trading ideas and mitigates the risk of

⁵ We believe it is unfortunate that such pejorative terms as “dark liquidity” and “dark pools” have now become ingrained in the terminology used by the financial markets and policymakers to describe a type of liquidity and trading venue that has brought certain benefits, as discussed below, to all kinds of market participants, including funds and their shareholders. We therefore are reluctant to use these terms when discussing issues surrounding this part of the market structure and urge that alternative terms be established.

information leakage. These venues also allow funds to avoid transacting with market participants who seek to profit from the impact of the public display of large orders to the detriment of funds and their shareholders.

ICI recognizes that while venues providing dark liquidity bring certain benefits to funds, there are concerns about the use of this practice, particularly the impact on the price discovery process, the impact of potential fragmentation on information and liquidity searches, and the impact on market integrity due to possible differences in access to markets and information. We therefore understand the Technical Committee's desire to examine dark liquidity and the use of dark pools. Nevertheless, the importance of funds being able to trade efficiently in large size through dark pools cannot be discounted. As we have stated in several letters to the U.S. Securities and Exchange Commission ("SEC"),⁶ the confidentiality of information regarding fund trades is of significant importance to ICI members. Any premature or improper disclosure of this information can lead to frontrunning of a fund's trades, adversely impacting the price of the stock that the fund is buying or selling.

We also understand that questions have been raised regarding the order execution quality provided to funds and the associated costs for funds of executing orders in dark pools as compared to the displayed, or "lit," markets. In general, ICI believes that the quality of execution provided by dark pools is very good and is no more costly (and may in certain situations be less costly) than traditional markets. However, as with any type of trading venue, execution results will vary depending on a number of factors such as the specific business model, the type of security the fund is seeking to trade, and overall market conditions at the time of the trade. It also is important to note that given the number of different types of facilities providing dark liquidity, it is difficult to provide an all encompassing view about the order execution quality provided by these types of venues.

III. Draft Principles to Address Regulatory Concerns

ICI supports the goals of the Technical Committee's draft principles to address regulatory concerns. As the Consultation notes, the principles are designed to assist regulatory authorities when dealing with issues concerning dark liquidity.⁷ We recommend, however, that regulatory authorities take a measured approach to any responses they feel appropriate and necessary to address concerns regarding dark liquidity. If regulations are too restrictive, they may unintentionally limit the use of evolving market practices and technological developments in a way that impedes funds' use of new and innovative trading venues such as dark pools.

⁶ See, e.g., Letters from Paul Schott Stevens, President, Investment Company Institute, to Christopher Cox, Chairman, Securities and Exchange Commission, dated September 14, 2005, August 29, 2006, and September 19, 2008.

⁷ Specifically, the Consultation states that the principles are designed to: minimize the adverse impact of the increased use of dark pools and dark orders in transparent markets on the price discovery process; mitigate the effect of any potential fragmentation of information and liquidity; help to ensure that regulators have access to adequate information to monitor the use of dark pools and dark orders; help to ensure that investors have sufficient information so that they are able to understand the manner in which orders will be handled and executed; and increase the monitoring of dark orders and dark pools in order to facilitate an appropriate regulatory response.

In addition, if regulations are too onerous or costly for certain market participants, they may determine to not offer certain products or services to investors. Similarly, the cost of trading may increase as market participants shift the burden of compliance with new requirements to investors. We therefore urge regulatory authorities to carefully balance these potential costs with the benefits any new regulations would provide to investors.

It also will be important for regulatory authorities to consider the varying business models and trading mechanisms of dark pools. For example, some dark pools in the United States offer specific size discovery mechanisms that are critical for funds in the anonymous execution of large-sized orders. Others operate in a manner more akin to broker-dealer trading venues; we believe these latter systems arguably should be treated differently from other dark pools for purposes of regulation.

Topic 1 - Transparency to Market Participants and Issuers

The first two draft principles address increasing transparency regarding dark liquidity. ICI shares the views of the Technical Committee of the importance of pre- and post-trade transparency in the financial markets. As investors, transparency of market information is vital to making informed investment decisions; a robust transparency regime provides investors with access to information about current trading opportunities, facilitates price formation and assists firms in providing best execution to their clients.

At the same time, we believe there are limits to the benefits of increased transparency in certain situations. We therefore urge regulatory authorities to closely examine the potential unintended consequences of increasing transparency of certain trade information, particularly the impact of the premature disclosure of critical information about fund orders in dark pools.

Principle 1: The price and volume of firm bids and offers should generally be transparent to the public. However, where regulators consider permitting different market structures or order types that do not provide pre-trade transparency, they should consider the impact of doing so on price discovery, fragmentation, fairness and overall market quality.

Exceptions from Pre-Trade Transparency for Large Orders

We are pleased that the Technical Committee recognizes that large orders may incur market impact costs if subject to full pre-trade transparency obligations and that it may be appropriate to have different levels of pre-trade transparency apply to different market structures or different order types.

ICI strongly supports the exceptions provided in various jurisdictions to pre-trade transparency for large orders. These exceptions are critical to funds and other institutional investors. In responding to the SEC's proposal on undisplayed liquidity, ICI expressed support for the concept of an exception from the transparency requirements for large-sized trades or quotes.⁸ At the same time, we cautioned

⁸ See ICI Letter on SEC Non-Public Trading Interest Proposal, *supra* note 4.

against drafting any such exceptions too narrowly.⁹

ICI also agrees with the principle that where regulators consider permitting different market structures or order types that do not provide pre-trade transparency, that they should consider the impact of doing so on price discovery, fragmentation, fairness and overall market quality. With that said, we believe that the benefits of exceptions to pre-trade transparency requirements for large orders entered into by funds outweigh the costs to the markets of providing such exceptions. We also support regulatory authorities ensuring that exceptions are applied consistently and coherently, that their use is not being abused, and that there is legal certainty regarding the interpretation of the rules applying to the exceptions.

Indications of Interest (“IOIs”)

The Consultation states that with regard to pre-trade transparency and dark pools and dark orders, regulators need to clarify the types of orders that will be considered firm bids and offers. The Consultation cites “actionable IOIs” as an example of a type of potential order that is intended to attract immediately executable order flow to a trading venue, and that regulators should examine whether it is appropriate to treat actionable IOIs as firm public quotes that should be displayed.

ICI addressed the issue of actionable IOIs in its letter to the SEC on undisplayed liquidity.¹⁰ Specifically, the SEC’s proposal amended the definition of “bid” or “offer” for purposes of the quoting requirements of the Securities Exchange Act of 1934 to apply expressly to actionable IOIs privately transmitted by dark pools and other trading venues to selected market participants. One of the goals of the SEC’s proposal was to make more quotes available to the public by requiring their inclusion in the consolidated quotation data.

ICI members do not typically permit their orders to be advertised via actionable IOIs (as those IOIs are characterized and defined in the SEC proposal), most significantly for fear of frontrunning. Therefore, while the SEC’s proposal would, in effect, eliminate actionable IOIs, we believe the benefits of pre-trade transparency outweigh any impact (limited as it might be) on fund trading. We therefore support the principle of treating actionable IOIs as firm public quotes that should be displayed.

⁹ For example, in the case of the SEC’s proposal, drafting an exception based on a large dollar value of an order may exclude certain large-sized orders in small-cap and mid-cap stocks that wouldn’t reach that threshold, but would raise the same concerns about the frontrunning of orders and information leakage as excepted orders. We therefore recommend that regulatory authorities draft exceptions for large-sized trades to include thresholds based not only on the value of a trade, but also on a variety of factors, *e.g.*, the lesser of the value of a trade, the number of shares of a trade, or the percentage of the average daily volume of a stock that a trade represents.

¹⁰ See ICI Letter on SEC Non-Public Trading Interest Proposal, *supra* note 4.

Principle 2: Information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public. With respect to the specific information that should be made transparent, regulators should consider both the positive and negative impact of identifying a dark venue and/or the fact that the trade resulted from a dark order.

ICI generally supports increasing post-trade transparency of information about dark pools and dark orders. At the same time, as discussed above, we believe that adequate exceptions to post-trade transparency to facilitate and ensure the efficient execution of large orders are critical.

The Consultation notes that in examining whether information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public, regulators should consider whether it is appropriate to require that the identity of the dark pool operator be revealed and, if so, how (*e.g.*, trade-by-trade and real time; trade-by-trade and end of day; or end-of-day and aggregate volumes in individual stocks).

The SEC recently proposed requiring the real-time disclosure of the identity of dark pools on trade reports. Currently, published trade reports in the United States only identify these types of trades as over-the-counter trades and do not identify the particular venue or other broker-dealer that reported the trade. While ICI supported the SEC's goal of increasing post-trade transparency for dark pools, we expressed concerns about several unintended consequences for funds.

Specifically, while the SEC included an exception in its proposal for certain large-sized trades that was intended to mitigate funds' concerns relating to information leakage, the real-time disclosure of the identity of the specific dark pool where non-expected trades were executed will nevertheless reveal too much information about fund orders. It is important for regulatory authorities to take into account that only a small portion of trades in dark liquidity venues take place in pools specializing in trading large blocks of securities. More often, funds must break up their larger "parent" orders into smaller "child" orders and execute these orders in other types of venues. ICI therefore believes that the real-time disclosure of individual venues would provide another crucial "piece of the puzzle" to those who intend to prey off the orders of funds and has the potential to facilitate the frontrunning of funds' security positions.

While ICI does not support the real-time disclosure of individual dark pools, we do support such disclosure on a delayed basis. To address concerns about the frontrunning of fund trades, we have recommended that regulators require the disclosure of the identity of individual dark pools on trade reports at the end of the trading day, on a stock-by-stock basis (*i.e.*, the volumes for each individual stock that were executed by the dark pool). Our members generally believe that this disclosure should apply uniformly across all types of stocks. Several ICI members, however, remain concerned that end-of-day disclosure for certain less liquid stocks, such as small-cap and mid-cap stocks, could still lead to frontrunning of fund trades. We therefore would not object to a bifurcated disclosure model where trades in large-cap, liquid stocks would be required to be disclosed at the end of the day and trades in smaller, less liquid stocks would be required to be disclosed on a further delayed basis (*e.g.*, T+5). To

further transparency of trades, we recommend that any trades that would have been excepted under the SEC's proposal, *i.e.*, large block trades, also be disclosed on a delayed basis in this manner.¹¹

Topic 2: Priority of Transparent Orders

Principle 3: In those jurisdictions where dark trading is generally permitted, regulators should take steps to support the use of transparent orders rather than dark orders executed on transparent markets or orders submitted into dark pools. Transparent orders should have priority over dark orders at the same price within a trading venue.

ICI strongly supports efforts to provide incentives for market participants to use transparent orders. A long-standing concern regarding dark liquidity is whether its trading volume has reached a sufficiently significant level that it impairs the quality of public price discovery. We believe the time is ripe for regulatory authorities to examine the impact of certain undisplayed liquidity on price discovery, as well as potential ways to encourage the further public display of orders.

Problems surrounding the lack of order interaction, its causes, and its impact on the securities markets are not new. ICI and its members have, for many years, recommended changes that would facilitate greater order interaction and, in turn, more efficient trading. For example, the Consultation notes that support for the use of transparent orders might be facilitated by providing for trade-through protection for transparent orders. When Regulation NMS was proposed in the United States, the Institute supported the establishment of a uniform trade-through rule for all market centers.¹² By affirming the principle of price priority, we believed a trade-through rule should, among other things, encourage the display of limit orders, which in turn would improve the price discovery process and contribute to increased market depth and liquidity. While Regulation NMS has resulted in several improvements to the operation of the securities markets in the United States, it arguably has not resulted in the increased display of orders as intended. This is not necessarily due to the trade-through rule itself or other efforts to provide incentives to display orders, but to other recent market structure developments that continue to raise concerns among investors about the frontrunning of their orders.

Ideally, funds would like as much liquidity as possible to be executed in the displayed markets. Nevertheless, we believe it is imperative that venues trading dark liquidity remain available to funds and that the regulations overseeing these venues facilitate their continued use. We are therefore concerned by suggestions in the Consultation that rather than incentivizing the use of transparent orders on transparent markets, regulators may choose to have only limited exceptions to pre-trade transparency (*e.g.*, by limiting exceptions in those jurisdictions in which they are available). We do not believe that limiting exceptions would necessarily result in more orders being placed in displayed markets. Funds,

¹¹ We believe this information should not be disclosed on an aggregated basis (*e.g.*, disclosure solely of the total volume for each individual trading venue) as this information would not be helpful to investors in assessing trading or identifying the volume of executions in particular stocks on individual venues.

¹² See ICI Regulation NMS Letter, Appendix A.

for example, would still face concerns regarding the frontrunning of their orders and would be reluctant to place large orders in displayed markets. ICI therefore recommends that regulatory authorities focus on examining methods to provide incentives for market participants to increase the display of orders, such as providing increased protection for displayed orders, while at the same time preserve needed exceptions to the pre- and post-trade transparency requirements.

Undisplayed Liquidity Handled by OTC Market Makers – Internalization

Broker-dealer internalized order flow represents a significant portion of undisplayed liquidity in the United States that funds do not have an opportunity, for the most part, to trade against, making trading large orders more difficult. Internalization raises a variety of concerns. For example, internalization may increase market fragmentation because it can result in customer orders not being publicly exposed to the market.

ICI has not suggested that internalization be prohibited. We have recommended, however, that further action be taken to ensure that internalized orders receive best execution. Specifically, any order executed through internalization should be provided with “significant” price improvement.¹³ Such a requirement would ensure that the internalizing broker-dealer provides at least some amount of “significant” price improvement to an internalized order and could potentially result in more customer orders being exposed to displayed markets if the amount of internalized orders is reduced.

Topic 3: Reporting to Regulators

Principle 4: Regulators should have a reporting regime and/or means of accessing information regarding orders and trade information in venues that offer trading in dark pools or dark orders.

ICI agrees with the Technical Committee that to understand the market structure issues posed by dark pools and to monitor trends in trading and trading behavior, it is important that regulators have access to accurate, timely and detailed information regarding trades executed through dark pools, as well as dark orders traded on transparent markets.

ICI has provided recommendations to the SEC on certain aspects of creating a reporting regime for regulatory authorities with respect to the SEC’s proposal to develop, implement, and maintain a consolidated audit trail (“CAT”) and a central repository for the CAT data for the trading of listed equities and options.¹⁴ ICI supported the establishment of a CAT. As the “flash crash” in the

¹³ We question whether providing price improvement to internalized orders in, for example, increments of hundredths of a penny is providing meaningful price improvement.

¹⁴ See ICI Consolidated Audit Trail Letter, Appendix A. See also SEC Release No. 62174 (May 26, 2010), 75 FR 32555 (June 8, 2010), available at <http://www.sec.gov/rules/proposed/2010/34-62174.pdf>. The SEC’s proposal would require “self-regulatory organizations” (“SRO”) and their members to provide detailed information regarding an order to a proposed repository on a real-time basis, including information sufficient to identify the customer. Each SRO and the SEC would have unlimited access to this information for purposes of performing their regulatory and oversight responsibilities.

United States illustrated, the SEC currently is unable to gather the information necessary to quickly and efficiently assess market events and trading activity. Nevertheless, while we supported the CAT, we expressed significant concerns over the confidential treatment of CAT data and any requirement for providing data in real time.¹⁵ Specifically, we noted concerns regarding the confidentiality of specific information about fund orders, particularly since this information would pass through and potentially be exposed to several market participants before reaching regulators. We believe our recommendations in this area can be useful to regulatory authorities as they examine methods to enhance trade reporting of dark pools.

Topic 4: Information Available to Market Participants about Dark Pools and Dark Orders

Principle 5: Dark pools and transparent markets that offer dark orders should provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed.

We strongly agree with the principle that it is important that market participants understand the way in which dark pools and dark orders in transparent markets operate. On several occasions, ICI has expressed the need for increased information regarding the routing of orders and the execution practices of trading venues.¹⁶ We believe that improved information would allow investors to make better informed investment decisions and, in turn, facilitate best execution. Currently, many funds feel that they do not have ready access to complete information about the orders provided to brokers and other trading venues, including those involving dark liquidity.

We therefore support the Technical Committee's suggestions that dark pools or transparent markets offering dark orders should ensure that market participants are provided with detailed explanations of information including: how trading occurs; how dark orders interact with transparent orders; which orders have priority; whether IOIs are disseminated and, if so, to whom; and policies and procedures that are intended to facilitate the management and disclosure of conflicts of interest that provide clarity around who has access to information about the dark pool and/or dark orders. This information is very similar to the information we have recommended the SEC consider requiring from broker-dealers and other trading venues.¹⁷

¹⁵ The SEC also has proposed the creation of a large trader reporting system that would enhance the SEC's ability to identify the effects of certain large trader activity on the markets, reconstruct trading activity following periods of unusual market activity, and analyze market events and trading activity for regulatory purposes. See ICI Large Trader Reporting Letter, Appendix A. See also SEC Release No. 61908 (April 14, 2010), 75 FR 21456 (April 23, 2010).

¹⁶ See, e.g., ICI Letter on SEC Concept Release on Equity Market Structure, *supra* note 4.

¹⁷ *Id.* Specifically, we recommended that certain information regarding the order routing and execution practices of broker-dealers and other trading venues be required, including: payments and other incentives provided or received to direct order flow to particular trading venues; specific information regarding the routing and execution of orders, for example, the trading venues to which an order was routed and did not get filled prior to being executed; external venues to which a broker routes orders, the percentage of shares executed at each external venue, and any ownership and other affiliations between the

Topic 5: Regulation of the Development of Dark Pools and Dark Orders

Principle 6: Regulators should periodically monitor the development of dark pools and dark orders in their jurisdictions to seek to ensure that such developments do not adversely affect the efficiency of the price formation process on displayed markets, and take appropriate action as needed.

ICI strongly supports regulatory authorities having adequate arrangements in place to continue to examine the changes to the structure of the securities markets and to identify emerging issues in a timely fashion. We also agree with the Technical Committee that as more dark pools evolve and equity market structures continually change, it is important that regulators monitor the development of dark pools.

We are concerned, however, about the breadth of the statement in the Consultation that such review by regulators could lead, in some jurisdictions, to a reduction of dark trading and/or dark orders. As discussed above, dark liquidity provides numerous benefits to funds. Reducing dark trading and/or dark orders without first closely considering the consequences on investors could negatively impact the trading by funds on behalf of their shareholders.

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If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, or Ari Burstein at (202) 371-5408.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

broker and any venues to which the broker routes orders; policies and procedures regarding the dissemination of information about a customer's order and trade information to facilitate a trade; and policies and procedures to control leakage of information regarding a customer's order and other confidential information.

Appendix A

Key ICI Comment Letters and Statements on Market Structure Issues

Order Execution Obligations: Letter from Craig S. Tyle, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated January 16, 1996; available at <http://www.ici.org/pdf/7561.pdf>

Regulation of Exchanges and Alternative Trading Systems: Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated July 28, 1998; available at http://www.ici.org/pdf/comment98_reg_exch_atr.pdf

Market Fragmentation Concept Release: Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 12, 2000; available at <http://www.ici.org/pdf/11894.pdf>

Subpenny Concept Release: Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated November 20, 2001; available at http://www.ici.org/policy/comments/01_SEC_SUBPENNY_COM

Regulation NMS: Letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 30, 2004; available at http://www.ici.org/policy/markets/domestic/04_sec_nms_com

U.S. Senate Market Structure Hearing: Statement of the Investment Company Institute, Hearing on “Dark Pools, Flash Orders, High Frequency Trading, and Other Market Structure Issues,” Securities, Insurance, and Investment Subcommittee, Committee on Banking, Housing & Urban Affairs, U.S. Senate, October 28, 2009; available at <http://www.ici.org/pdf/23925.pdf>

Flash Orders: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated November 23, 2009; available at <http://www.ici.org/pdf/23973.pdf>

Non-Public Trading Interest: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated February 22, 2010; available at <http://www.ici.org/pdf/24142.pdf>

Market Access: Letter from Ari Burstein, Senior Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated March 29, 2010; available at <http://www.ici.org/pdf/24210.pdf>

SEC Concept Release on Equity Market Structure: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated April 21, 2010; available at <http://www.ici.org/pdf/24266.pdf>

SEC Market Structure Roundtables: Letters from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 1, 2010 and June 23, 2010; available at <http://www.ici.org/pdf/24361.pdf> and <http://www.ici.org/pdf/24384.pdf>

Circuit Breakers: Letters from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 3, 2010 and July 19, 2010; available at <http://www.ici.org/pdf/24364.pdf> and <http://www.ici.org/pdf/24438.pdf>

Large Trader Reporting System: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 22, 2010; available at <http://www.ici.org/pdf/24381.pdf>

Clearly Erroneous Executions: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated July 19, 2010; available at <http://www.ici.org/pdf/24437.pdf>

Consolidated Audit Trail: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 9, 2010; available at <http://www.ici.org/pdf/24477.pdf>

European Commission Review of MiFID: Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Directorate General, European Commission, dated February 2, 2011; available at <http://www.ici.org/pdf/24946.pdf>