



March 29, 2010

Via Electronic Mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Risk Management Controls for Brokers or Dealers with Market Access; File No. S7-03-10

Dear Ms. Murphy:

Managed Funds Association (“MFA”)¹ welcomes the opportunity to provide comments on the Securities and Exchange Commission’s (“Commission” or the “SEC”) proposed new Rule 15c3-5 under the Securities Exchange Act of 1934 (“Exchange Act”) regarding risk management controls for broker-dealers with market access contained in Securities Exchange Act Release No. 61379 (the “Release”).² MFA is supportive of the Commission’s review of broker-dealer risk management controls and practices.

We agree with the Commission that broker-dealers should have appropriate and pragmatic risk management controls to prevent trading errors and to ensure compliance with applicable regulatory requirements; and that these controls should apply to both proprietary and customer business. As customers of broker-dealers, we submit for the Commission’s consideration comments on the implementation of proposed Rule 15c3-5 (the “Proposed Rule”) with respect to unfiltered sponsored access, market access and confidentiality safeguards.

I. COMMENTS

A. Unfiltered Sponsored Access

MFA supports the proposal to eliminate the practice of “unfiltered” sponsored access, where a broker-dealer provides a customer with access to an exchange or alternative trading system without the customer’s orders first passing through the broker-dealer’s pre-trade risk management controls. We believe the Commission can achieve the same underlying objectives of the Proposed Rule, including the requirement that sponsoring broker-dealers maintain full control and transparency of orders in real-time and the ability to terminate orders, while providing

¹ MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$1.5 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

² 75 *Fed. Reg.* 4007 (Jan. 26, 2010).

sponsoring broker-dealers with slightly greater flexibility in implementing risk management controls. In this respect, we believe the focus of the Proposed Rule should be on a broker-dealer's base level of risk management controls rather than which entity develops the risk management technology utilized by the broker-dealer.

The Release requires risk management controls and supervisory procedures to be under the direct and exclusive control of the broker-dealer with market access. While we agree that broker-dealers should have exclusive control over and ultimate responsibility for automated risk management controls, including the ability to monitor and adjust the controls in real-time, we disagree with the Commission's assertion that any third parties that develop risk management systems must be independent of customers. Technology developed by customers or entities affiliated with customers can be just as effective as technology developed by independent third parties or broker-dealers. In such instances, a broker-dealer should be required to validate and test the technology prior to utilization.

Allowing the flexibility to use such technology, subject to the full control and responsibility of a broker-dealer, would also help ensure that the rule does not create unfair competitive advantages for proprietary broker-dealer trading desks versus their customers. The ability to fine tune the technological architecture and implementation of pre-trade controls is a critical competitive issue because subtle differences in architecture and implementation can have a drastic impact on speed of execution and latencies. Our members have experienced that it is an acceptable practice in other countries that require broker-dealers to have exclusive control over market access controls for customers to participate in the design and implementation of automated pre-trade controls.

Permitting flexibility in the implementation of risk management controls will allow for and encourage greater competition and technological innovation that will enhance the ability of customers to more effectively execute their orders and obtain best execution. We believe the Commission's emphasis should be on the base level of risk management controls, rather than how the risk management controls are developed.

B. Market Access

We support the adoption of clearer, more uniform principles with respect to market access, of which sponsored access is a subset. In adopting a final rule on risk management controls for broker-dealers with market access, the Commission should be mindful of not creating competitive disadvantages for customers. Customers of broker-dealers are concerned that market regulations should not advantage a broker-dealer's proprietary business over its customer business. That said, MFA supports the pragmatic application of filters or control mechanisms and recognizes that a broker-dealer may impose different types of filters and control settings on proprietary orders because such orders may raise different types of risks from customer orders.

C. Confidentiality Safeguards

The Commission should re-emphasize the need for broker-dealers to maintain information barriers between a broker-dealer's purely proprietary trading businesses and customer-facing trading businesses. To enhance investor protection, we believe the Commission in adopting the Proposed Rule should reinforce and remind broker-dealers to respect and comply with their existing regulatory responsibilities and any additional contractual obligations to protect

the confidentiality of customer orders. We believe this is especially relevant when the execution infrastructure provided by a sponsoring broker-dealer is the same for both proprietary and client market connectivity.

II. CONCLUSION

MFA appreciates the opportunity to provide comments on the Commission's Proposed Rule regarding risk management controls for broker-dealers with market access. As discussed, we believe the Proposed Rule should require broker-dealers to apply appropriate and pragmatic market access risk management controls for both proprietary and customer order flow, and that the Proposed Rule should permit some additional flexibility in the implementation of the controls. Finally, we believe it is appropriate for the Commission in the final release of the Proposed Rule to reiterate the need for broker-dealers to maintain confidentiality safeguards to prevent the misuse of a customer's order information.

We would be pleased to meet with the Commission or its staff to further discuss our comments. If the staff has questions or comments, please do not hesitate to call Jennifer Han or the undersigned at (202) 367-1140.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President and
Managing Director, General Counsel

CC: The Hon. Mary Schapiro, Chairman
The Hon. Kathleen L. Casey, Commissioner
The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Troy A. Paredes, Commissioner
Robert W. Cook, Director
Division of Trading and Markets
James Brigagliano, Deputy Director
Division of Trading and Markets