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VIA EMAIL and
BY OVERNIGHT MAIL

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

Re: File No. S7-03-10; Release No. 34-61379
Risk Management Controls for Brokers or Dealers with Market Access

Dear Ms. Murphy:

NYSE Euronext, on behalf of the New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), and NYSE Arca Inc. ("NYSE Arca"), appreciates the opportunity to comment on the above-referenced proposal of the Securities and Exchange Commission ("Commission"). Overall, NYSE Euronext supports the Commission's proposal and believes that Proposed Rule 15c3-5 under the Securities Exchange Act of 1934 ("Exchange Act") would help prevent and mitigate risks associated with securities trading, including breaches of credit or capital limits and erroneous orders due to computer malfunctions or human error.

As described below, we have specific comments on certain of the matters addressed in the Commission's proposing release ("Proposing Release"). In addition, we have comments on two broader policy areas implicated by the Commission's proposal. First, we believe that the requirements of Rule 15c3-5, as proposed, could create regulatory and competitive disparities for risk management systems operated by national securities exchanges. Second, we believe that Rule 15c3-5 should include an exception for certain activities of broker-dealers that operate as facilities of a national securities exchange.

Specific Comments on Proposed Rule 15c3-5

We support the Commission's proposal to require broker-dealers with access to trading directly on an exchange to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. In response to the Commission's requests for comment, we have comments on two particular aspects of Proposed Rule 15c3-5.

First, we believe that a sponsoring broker-dealer should be subject to proposed Rule 15c3-5 with respect to all of its sponsored participants, including other broker-dealers. On this aspect of the proposal, the Commission asked whether an arrangement between a sponsoring broker-dealer and another broker-dealer should be treated differently than a similar arrangement with a non broker-dealer. In our view, the concerns identified by the Commission in connection with sponsored access arrangements are just as relevant for broker-dealers as for other sponsored participants. Each exchange is responsible for monitoring and surveilling orders submitted by member firms, and exchanges must be able to hold a specific party responsible for compliance with applicable exchange rules on each order. It would be impractical for an exchange to have to determine the particular nature of the underlying sponsored participant on each sponsored order in order to determine whether the exchange is required to follow up with the sponsoring firm or the sponsored firm. This inefficiency only would be amplified if the exchange were required to determine further whether the underlying sponsored participant was itself a member of the exchange. Accordingly, we believe that each firm that allows its market participant identifier to be used on a sponsored basis should retain responsibility for all of the orders it sponsors, regardless of the nature of the sponsored participant.

Second, proposed Rule 15c3-5 would require a broker-dealer's risk management controls to reject erroneous orders that indicate duplicative orders. We are concerned that, without further clarification, this aspect of the proposed rule would create operational difficulties in determining how to set risk management parameters. Depending on the particular sponsored participant, it would be difficult to determine whether a series of similar orders did in fact constitute duplicative orders or instead was part of an intentional trading strategy. Accordingly, we urge the Commission either to eliminate this aspect of the proposal or, at a minimum, to clarify that a broker-dealer could apply reasonable standards to detect duplicative orders based on the trading activity of a particular sponsored participant.

Potential Effects of the Proposal on Risk Management Systems Operated by National Securities Exchanges

We applaud the Commission for stating in the Proposing Release that broker-dealers would have the flexibility to seek out risk management technology developed by third parties. In this regard, we expect that many broker-dealers will choose to use third-party technology to satisfy their obligations under Rule 15c3-5 as a cost-efficient manner to comply with the new requirements without expending the considerable resources that would be necessary to develop their own-custom tailored technology. However, we are concerned that competitive

disparities will result from the Commission's current regulatory treatment of risk management systems operated by national securities exchanges.

In this regard, NYSE Euronext operates a service called Risk Management Gateway ("RMG"),[1] which enables broker-dealers that provide sponsored market access to monitor and oversee their sponsored participants' market activity. When a sponsored customer's order passes through RMG, the RMG software determines whether the order complies with order criteria that the sponsoring broker-dealer has established for that customer. If the order is consistent with the parameters set by the sponsoring broker-dealer, RMG allows the order to continue along its path to the applicable exchange. If the order falls outside of those parameters, then RMG returns the order to the sponsored customer.

In connection with the Commission's proposal, we note that RMG allows broker-dealer personnel to directly monitor the operation of the financial and regulatory risk management controls in real-time. We also note that a broker-dealer may use RMG in connection with orders sent to any market center, regardless of affiliation with NYSE Euronext. Additionally, NYSE, NYSE Amex, and NYSE Arca do not require their member firms to use RMG in connection with their sponsored access arrangements.

If the Commission's proposal is adopted, we expect that many, if not all, of the broker-dealers subject to Rule 15c3-5 will seek out high-quality third-party technology such as RMG, and we are confident that RMG we be a market leader in this regard. However, we are concerned that the Commission's current regulatory treatment of RMG would create regulatory and competitive disparities in a market that the Commission's proposal would play a large part in creating. As the Commission is aware, RMG is considered an exchange facility, and it therefore is subject to certain requirements applicable to national securities exchanges, including that NYSE Euronext submit proposed rule changes to the Commission in connection with any change to RMG's fees.

We believe the Commission should be consistent in its regulatory treatment of risk management tools such as RMG, particularly given that proposed Rule 15c3-5 would indirectly mandate their use. Other providers of risk management technology that are not affiliated with a national securities exchange are able to provide the same services as RMG

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[1] *See, e.g.*, Securities and Exchange Act Release No. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR-NYSE-2008-101).

without having to file proposed rule changes with the Commission. If the Commission believes that risk management tools such as RMG are so intertwined with market access that, as a policy matter, those services all should be considered facilities of an exchange then we encourage the Commission to clarify that any third party service used by a broker-dealer to satisfy Rule 15c3-5 in connection with access to a national securities exchange must be operated as a facility of an exchange.

However, we do not believe that risk management technology such as RMG should be regulated as an exchange facility simply by virtue of being operated by a national securities exchange. Such a regulatory construct could put RMG, which is required to file proposed rule changes, at a competitive disadvantage with other providers of the same services that are not required to file proposed rule changes. In particular, this regulatory disparity could impair RMG's ability to implement new services and pricing structures to adapt to developments in what likely will become a competitive market environment.[2]

Application of the Proposal to Exchange Routing Systems

Finally, we urge the Commission to provide an exclusion from the requirements of Rule 15c3-5 for broker-dealers that operate as facilities of a registered national securities exchange, generally for the purpose of routing orders to other markets. The application of Rule 15c3-5 to exchange-facility broker-dealers would conflict with specific requirements imposed by the Commission on the activities of our affiliated broker-dealer, Archipelago Securities ("Arca Securities").

As the Commission is aware, Arca Securities is the routing broker of NYSE, NYSE Amex, and NYSE Arca and operates as a facility of each exchange. As such, Arca Securities is subject to a layer of direct Commission oversight of its activities in addition to the requirements of the Commission and FINRA applicable to broker-dealers generally. In particular, any changes to the specific functions or services that Arca Securities provides are subject to Commission approval through a proposed rule change filed pursuant to Section 19 of the Exchange Act.

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[2] If the Commission determines that risk management tools such as RMG should be treated as exchange facilities simply by virtue of being operated by a national securities exchange, then we believe the Commission should consider changes to the rule filing process relating to such facilities in order to prevent competitive disparities with unregulated entities providing the same services. For example, the Commission could specifically provide exemptions from the rule filing process for such facilities or allow such facilities to file proposed rule changes on a confidential basis.

As proposed, Arca Securities would arguably be subject to Rule 15c3-5 because it has "market access" as that term is defined in the proposal. However, Arca Securities acts in a capacity that is wholly different from activities performed by a broker-dealer that provides sponsored access to its customers (including other broker-dealers). Arca Securities' activities generally are limited to routing orders to other exchanges on behalf of NYSE, NYSE Amex and NYSE Arca. As such, it is subject to specific restrictions in connection with its primary function of routing orders to away market centers in order to comply with Rule 611 of Regulation NMS under the Exchange Act (the "Order Protection Rule"). In a number of approval orders, the Commission has expressly limited the functions that Arca Securities may perform in this regard. Specifically, the Commission has stated that, in its capacity as a routing broker, Arca Securities may not change the terms of an order, systematically reject an order, or otherwise perform data validation prior to the delivery of the order to an away market center or after return receipt and delivery of the execution to the exchange.[3] Orders that are routed by Arca Securities have been sent to NYSE, NYSE Amex or NYSE Arca by a broker-dealer that is a member of such exchange, and which is subject to the exchange's supervisory and risk management requirements related to the provision of market access to its customers. Assuming adoption of proposed Rule 15c3-5, such broker-dealers will be subject to the specified requirements. Thus, providing an exception for routing brokers that operate as exchange facilities, such as Arca Securities, would not create any regulatory gaps. However, without an exception from Rule 15c3-5 for the types of routing services that Arca Securities provides, the firm would be unable to reconcile the requirements of the new rule and the existing Commission-imposed restrictions on its activity.

Routing broker-dealers generally raise unique regulatory issues in the context of their appropriate role in applying risk management controls around market access. These issues are more complex when the routing broker-dealer is also a facility of an exchange because of the access limitation requirements imposed by Section 6 of the Securities Exchange Act of 1934. As a result, we believe that it is impracticable to subject such broker-dealers to Rule 15c3-5. Going forward, we look forward to working with the Commission and its staff on a more tailored regulatory approach to these unique entities.

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[3] *See, e.g.*, Securities Exchange Act Release Nos. 59473 (February 27, 2009), 74 FR 9853 (File No. SR-NYSEALTR-2009-18); 59011 (November 24, 2008), 73 FR 73360 (File No. SR-NYSE-2008-122); and 59010 (November 24, 2008), 73 FR 73373 (File No. SR-NYSEArca-2008-130).

Conclusion

We appreciate the opportunity to comment on this important proposal, and we would be happy to discuss the matter further with the Commission and the staff.

Very truly yours,

cc: The Hon. Mary Schapiro, Chairman
The Hon. Luis Aguilar, Commissioner
The Hon. Kathleen Casey, Commissioner
The Hon. Troy Paredes, Commissioner
The Hon. Elisse Walter, Commissioner
Mr. Robert W. Cook, Director, Division of Trading and Markets
Mr. James Brigagliano, Deputy Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets
Mr. John C. Roeser, Assistant Director, Division of Trading and Markets