EWT
LLC

March 29, 2010

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

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

Dear Ms. Murphy:

EWT, LLC ("EWT") appreciates the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on the proposed Rule 15c3-5[1] ("Proposed Rule") under the Securities Exchange Act of 1934 (the "Exchange Act").

I. Overview

EWT strongly supports the Commission's efforts to apply consistent, comprehensive and effective standards for access to the US equities markets. Inconsistencies and gaps in current SRO guidance have created an unequal playing field vulnerable to regulatory arbitrage, and thereby created the potential for unnecessary risk in the markets. We believe that the Proposed Rule, with minor modifications, will remedy this situation and provide a consistent and robust framework for market access. Specifically, we propose the following:

- The definition of "market access" should be expanded to require that all trades in US equities, whether executed on an exchange, ECN, ATS, internalization facility, be subject to pre-trade risk controls and regulatory checks.

- Broker-dealers sponsoring market access should be permitted to allocate contractually their 15c3-5 responsibilities to the sponsored broker-dealer, consistent with longstanding practice under existing SRO regulations.

We believe that the Proposed Rule, subject to the above modifications, will address the Commission's concerns regarding the consistency and adequacy of risk-controls related to market access more completely and with fewer unnecessary costs and other inefficiencies than if the rule were implemented as proposed.

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[1] Release No. 34-61379, 75 Fed. Reg. 4007 (Jan. 26, 2010) (the "Proposing Release").

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II. Background

As a registered market maker on multiple exchanges, EWT provides significant liquidity to the marketplace and investors. EWT is a proprietary, self-clearing broker-dealer registered with the Commission under Section 15 of the Exchange Act. EWT is a member of the Financial Industry Regulatory Authority, the New York Stock Exchange, NASDAQ and, together with its affiliates, operates across more than 25 other exchanges and market centers around the world. Engaging in direction-neutral algorithmic trading and market making and using proprietary trade execution technology, EWT has a significant market share in several asset classes and is an active participant in the public equities markets. EWT does not engage in customer transactions and derives its income from its proprietary market making activities.

As an active participant in the equities market, EWT strongly supports the efforts of the Commission to ensure the fairness, efficiency and soundness of the US markets. While the use of pre-trade risk controls and pre-trade regulatory checks have long been accepted as a "best practice" for prudent broker-dealers, current guidance from the SROs on this matter is inconsistent and incomplete. This ambiguity affords the troubling possibility that some broker-dealers are executing trades in the US equity markets without applying reasonable pre-trade risk controls; likewise, some broker-dealers may be permitting entities that are not regulated broker-dealers to access the markets through the broker-dealer's exchange memberships, without either party applying pre-trade risk controls. We support the Proposed Rule's goals of both harmonizing regulatory guidance on this issue, and eliminating the risks associated with access to the US equity markets by participants not employing sound risk controls.

III. Application of Risk Controls to All Trades

As a matter of policy, we believe that all activity in the US equity markets should be subject to appropriate pre-trade risk and regulatory monitoring. Simply put: any order that is entered in the market should be subject to pre-trade controls by a registered broker-dealer.

In the simplest case, where a broker-dealer directly accesses an exchange, the broker-dealer should be responsible for operating a pre-trade risk and regulatory control system. In the case where a non-broker-dealer intends to access the US equity markets electronically, the sponsoring broker-dealer should be responsible for operating a pre-trade risk and regulatory control system – "unfiltered access" for non-broker-dealers should not be permissible, since there is no regulatory guarantee that the proper risk and regulatory controls are in place, and there is no regulatory oversight of the non-broker-dealer.

Similarly, if non-broker-dealer customers are accessing an ATS, the broker-dealer that is responsible for clearing the customers' trades should be responsible for operating pre-trade risk and regulatory controls. We believe that even if the clearing firm is not providing use of its MPID to the non-broker-dealer ATS subscriber, it is otherwise providing access to the ATS through the provision of clearing services. We respectfully request that the Commission clarify

this matter and close a potential loophole whereby non-broker-dealers can execute trades without any broker-dealer applying the requisite pre-trade risk and regulatory controls.

Furthermore, the requirement to implement pre-trade risk controls should not be limited to trades executed on an exchange, ECN or ATS, but should also be applied to trades executed upstairs, with a wholesale market maker, or internalized within a broker-dealer. Exempting broker-to-broker trades negotiated off-exchange – which by definition lack the transparency of trades executed in the public markets – from pre-trade risk and regulatory controls creates a two-tiered system where certain privately arranged transactions are not subject to the same high standards as public transactions.

In the case of internalization of customer orders, an internalizing broker-dealer should have the same obligations to vet a customer's order whether or not the order ultimately makes it to the public markets. An internalized trade that appears to be a "fat-finger", exceeds a customer's credit limits or violates regulations is no less serious a problem when executed internally instead of on a public exchange. The same rationale that compels pre-trade checks for orders routed to the public markets compels pre-trade checks when these orders are internalized. Accordingly, we would recommend that the Proposed Rule be expanded to apply to access to any facility that matches orders and reports the resultant trades to the consolidated tape.

IV. Allocation of Responsibility Among Regulated Broker-Dealers

While we believe that all trades executed in the US markets should be subject to the pre-trade risk and regulatory controls of a broker-dealer, we also support the ability of broker-dealers to allocate responsibility prudently among themselves when multiple broker-dealers handle a particular order. Such allocation of responsibility is a longstanding practice within the industry and has been repeated recognized through regulatory rule making.[2] These contractually-based arrangements recognize that, depending on the nature of the business relationship, certain firms may be better able to perform particular functions than other firms.

For example, the broker-dealer that originates an order will have the richest context in which to evaluate the risk exposure and regulatory compliance of that order. An introducing broker, with full knowledge of a customer's balances, restrictions, history and trading and investment strategies, is best suited to determine the appropriate controls to apply for that customer. A sponsoring broker-dealer, lacking this context, cannot likely perform pre-trade controls with the same degree of accuracy. Thus, after conducting thorough due diligence, the sponsoring broker-dealer may reasonably conclude that the introducing broker-dealer's pre-trade risk and regulatory checks are superior to its own, and that the application of its own controls adds little, if any, benefit. In this scenario it would therefore be best for the introducing broker-

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[2] For example, FINRA Rule 3230 explicitly contemplates the division of responsibilities between clearing firms and their customers, and SEC Rule 204(d) permits the allocation of fail-to-deliver positions to a broker-dealer.

dealer to assume responsibility for the risk management and regulatory controls of Rule 15c3-5 through a contractual arrangement with the sponsoring broker-dealer.[3]

It bears note that when sponsoring and sponsored broker-dealers both employ pre-trade risk controls on the same orders, the repetition is not only inefficient, but may actually increase risk. For example, consider broker-dealer A, who routes through broker-dealer B to access an exchange. Broker-dealer A may reasonably employ different pre-trade risk controls for orders that establish a position versus orders that close out or hedge a position – the former category clearly increases the broker-dealer's risk and exposure, the latter category clearly decreases the broker-dealer's exposure. However, broker-dealer B's risk control systems may neither be able to determine which of broker-dealer A's orders are hedging risk, nor be able or willing to apply different pre-set risk controls based on the "intent" of the order. As a result, if broker-dealer B's unsophisticated pre-trade risk rejected the hedging orders of broker-dealer A, broker-dealer A would ultimately be exposed to *more* risk. In such cases, it may make sense for both broker-dealers to enter into a contractual arrangement where broker-dealer A ensures compliance with Rule 15c3-5.

Another example is the case of an exchange routing broker. The exchange-operated brokers provide a valuable service to members by routing orders to other market centers upon request. Unfortunately, such routing brokers lack the context to effectively apply pre-trade risk and regulatory controls to the orders which they route, and any attempt to do would bring little benefit – and potentially increase risk – as outlined above. Again, in such an example it makes sense for the exchange routing broker to be able to allocate responsibility for compliance with Rule 15c3-5 to the broker-dealer that originally entered the order on the exchange.

Our regulatory framework has long recognized that, given the diversity of business arrangements between broker-dealers, accommodations should be made for the prudent allocation of regulatory and risk responsibilities when warranted. We respectfully request that broker-dealers be afforded this ability under Rule 15c3-5 as well.

V. Policies and Procedures

We believe that the principles-based approach put forth in the Proposed Rule is appropriate for an issue as complex and multi-faceted as risk management. An effective risk management system should be tailored to the business of the broker-dealer, taking into account a comprehensive view of the firm's activities, including the individual circumstances of various customers and clients, the incentive structure and human resources policies of broker-dealer, the technology employed, and a qualitative analysis of the trading goals and strategies employed across all asset classes for each entity placing orders. Given the immense diversity of business models and their implementation, it would be extraordinarily difficult to generate a universally-applicable checklist of pre-trade controls that would be comprehensive or even correct.

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[3] To be clear, we do not believe that such arrangements should be permitted with a non-broker-dealer, due to the lack of regulatory oversight.

On a related point, we believe that the Chief Risk Officer, Chief Compliance Officer, or equivalent officer is a more appropriate person to certify that a firm's risk management systems comply with the Proposed Rule than the Chief Executive Officer. Risk management has evolved into a sophisticated discipline, requiring extensive specialized training and experience. An individual with the requisite background to undertake a critical review of the firm's systems and issue an informed analysis of their adequacy should make the proposed certification. This would be a natural component of the existing requirements for annual compliance reviews.

VII. Recommendations

As described above, we support the Proposed Rule and the efforts of the Commission to harmonize disparate SRO guidance regarding market access, ensuring that appropriate risk controls are employed when accessing the US equity markets. In order to effectively achieve these goals, we respectfully request that the Commission also consider, in particular, the following modifications to the Proposed Rule, which we have ranked in order of importance:

1) The definition of "market access" should be expanded to require that all trades in US equities, whether executed on an exchange, ECN, ATS, internalization facility, be subject to pre-trade risk controls and regulatory checks.

2) Broker-dealers sponsoring market access should be permitted to allocate contractually their 15c3-5 responsibilities to the sponsored broker-dealer, consistent with longstanding practice under existing SRO regulations.

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EWT appreciates the opportunity to comment on the Proposed Rule and would be pleased to discuss any of the comments or recommendations in this letter with the Commission staff in more detail. If you have any questions, please do not hesitate to contact the undersigned at (310) 651-9746.

Sincerely,

Peter Kovac
Chief Operating Officer and
Financial and Operations Principal

cc: Mary L. Schapiro, Chairman
Kathleen L. Casey, Commissioner
Elisse B. Walter, Commissioner
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner

Robert W. Cook, Director, Division of Trading and Markets
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