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Ms. Elizabeth Murphy
Secretary
U.S. 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:

Deutsche Bank Securities Inc. ("DBSI") appreciates the opportunity to comment on the proposal by the Securities and Exchange Commission ("SEC" or "Commission") to adopt new Rule 15c3-5 ("Access Rule") under the Securities Exchange Act of 1934 ("Exchange Act").[1] The Access Rule would require broker-dealers that provide direct trading access to an exchange or an alternative trading system ("ATS") to adopt certain risk management controls and supervisory procedures that are reasonably designed to manage the financial, regulatory, and other risks of the market access. In general, DBSI supports the SEC's proposal to prohibit unfiltered access and to impose certain risk control policies and procedures on broker-dealers providing market access on either a sponsored or direct market access basis. As discussed below, however, we believe that certain changes to the proposal are needed in areas where the proposed Access Rule is either unclear in its requirements or overly broad in its scope.

I. Background on Electronic Market Access

As the Commission is aware, the various forms of electronic market access have grown over the past several years as market participants have sought to interact almost instantaneously with both posted quotes and undisplayed sources of liquidity. This is a natural outgrowth of the increasingly automated nature of stock exchanges, the development of high speed trading strategies and complex trading algorithms, and the large decrease in trading costs (from the perspective of both brokerage commissions and exchange access fees). The provision of electronic market access by broker-dealers has taken three forms: (1) direct market access ("Direct Market Access"), where orders from a customer are routed to a market center through a broker-dealer's routing systems in which the broker-dealer implements certain pre-execution controls (e.g., pre-trade size filters) and post-trade checks; (2) sponsored access ("Sponsored Access"), where orders from a customer are routed to a market center through a third party's routing mechanisms that have been authorized by the sponsoring broker-dealer and in which the broker-dealer implements certain pre-execution controls and post-trade checks; and (3) unfiltered access ("Unfiltered Access"), where a customer submits orders directly to a market center by giving up its broker-dealer's name without such orders being subject to any pre-trade controls applied by the broker-dealer. The broker-dealer community, SIFMA, the self-regulatory organizations ("SROs") and the SEC have discussed over the past few years how best to satisfy the regulators' issues with this

[1] See Securities Exchange Act Release No. 61379 (Jan. 19, 2010), 75 FR 4007 (Jan. 29, 2010) ("Proposing Release").

phenomenon without forcing market participants to forgo a highly efficient and low cost means of market access.

In general, DBSI views the growth of electronic market access as a beneficial development in the markets. The increase in volume due to high speed trading by sophisticated market participants has added near-term liquidity to the market and filled a void left by the decline in market maker support as spreads tightened, market making profits declined and liquidity became dispersed over dozens of execution venues. Nevertheless, we are cognizant of the market and systemic risks that regulators perceive in unchecked market access, and agree that uniform guidance from the SEC as to the responsibilities of market access providers is needed. In this regard, we are in accord with the two main aspects of the proposed Access Rule. First, we recognize that Unfiltered Access poses risks to both the markets and the access providers and therefore understand the SEC's intention to prohibit this type of access. Second, we also agree that reasonable pre-execution risk controls should be applied to orders of market participants using Sponsored Access or Direct Market Access. Thus, we view positively the SEC's step in proposing an Access Rule that provides uniform guidance in this area. We provide below our thoughts on how to improve the Access Rule so that it does not operate in an unclear manner, impose unnecessary costs, or set unattainable goals.

II. Comments on the Access Rule

A. Multiple Broker-Dealer Routing Arrangements

One major concern with the Access Rule is that it does not provide clarity as to its application in the context of routing arrangements involving multiple broker-dealers. There are many different structures involving more than one broker-dealer where a customer might obtain market access. As examples: (1) an introducing broker could provide market access to its customers through a separate executing or clearing broker; (2) a broker-dealer could route orders to another broker-dealer who acts as a conduit for orders to a particular marketplace; and (3) for orders submitted to a manual trading floor, a broker-dealer could submit orders to an independent floor broker. These situations involve multiple broker-dealers in the chain of market access in order to provide our customers with best execution and seek out additional liquidity. Yet, we believe that it would be unnecessary and overly burdensome to apply all of the Access Rule's requirements to each broker-dealer in the chain of access. In this regard, there are little, if any, added protections if a broker-dealer further down the access chain is required to process through its controls the orders that have already been screened by another broker-dealer. In addition, not all of the broker-dealers in the access chain have the same information about the ultimate customer to be in a position to implement the policies and procedures mandated by the Access Rule. We also believe it would be unworkable to impose each of the Access Rule requirements on a broker-dealer simply because it is last in the chain of access (and therefore is connected directly to the execution venue) as that broker-dealer may not have the same level of customer information possessed by the broker-dealers sending it order flow.

Our recommendation is that the Commission clarify that in multiple broker access arrangements, the broker-dealers involved may allocate among themselves the obligations imposed by the Access Rule. This allocation structure already is imbedded in introducing broker-clearing broker arrangements under NYSE Rule 382. In addition, the Commission has permitted multiple brokers involved in the routing of a customer short sale order to

contract among themselves the responsibility for performing the customer locate under Regulation SHO of the Exchange Act.

B. Credit and Capital Controls and Procedures

Another important area in need of clarification in the Access Rule is the requirement that a broker-dealer providing market access adopt management controls and supervisory procedures to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer. The Proposing Release states that, under this provision, a broker-dealer would be required to set appropriate credit thresholds for each customer for which it provides market access and would be required to monitor on an on-going basis whether a customer's credit threshold remains appropriate.[2] We note that the real financial risk in a market access arrangement at the point of order entry is not the particular credit of the customer submitting the order, but the possibility of a "fat finger" submission of orders that are completely out of proportion to the size of the client. Consequently, rather than performing a pre-trade "credit" check, a market access provider instead should have in place pre-set controls to prevent the entry by a client of orders of a total dollar size that significantly exceed in magnitude the usual orders of the client. We therefore believe that the Commission should amend the Access Rule to replace a pre-trade credit threshold with a threshold based on the total dollar value of open orders placed by a customer.[3] We further believe that the Commission should clarify that broker-dealers can impose such "notional dollar" thresholds by categorizing customers based on their assets, such that a broker-dealer could allow a group of customers in the same asset range to have the same notional dollar threshold. We believe that such a position is consistent with the requirement in the Access Rule that a broker-dealer establish a threshold for each customer.

The Access Rule can be further improved if the Commission eliminates the requirement to more finely-tune capital or credit controls by sector, security, or otherwise where appropriate. We initially note that the fine-tuning requirement is vague. One of the consequences of this vagueness is that broker-dealers could be found to have violated the Access Rule through an inspection because they have not finely-tuned their capital or credit controls in a manner satisfactory to inspection staff. Moreover, as noted above, we believe the most effective pre-order check is a test based on the total dollar value of open orders submitted by a customer. Further refinements would impose additional costs and screening delays with little or any benefit. We therefore recommend that the Commission eliminate the fine-tuning requirement from the Access Rule.

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[2] See Proposing Release at 4013.

[3] Another example of the inefficiency of a pre-trade credit check involves margin oversight. The Commission takes the position in the Proposing Release that the pre-order entry regulatory checks would include applicable margin requirements. See, e.g., Proposing Release at 4012. Unless a broker-dealer providing market access has a clearing relationship with a customer, however, it would not be able to monitor whether that customer's trading activity is consistent with the margin requirements for that customer.

C. Real-Time Surveillance for Rule Violations

An additional area in which the Access Rule needs clarification is with respect to the type of post-trade monitoring the Commission expects broker-dealers to conduct under the rule. The Access Rule's requirement that broker-dealers have controls and procedures reasonably designed to ensure compliance with all regulatory requirements, including controls and procedures reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports, suggests that broker-dealers must conduct some type of real-time surveillance of their clients' trading activity for rule violations to comply with the rule. Similarly, the Commission states in the Proposing Release that it "believes that immediate reports of executions would provide surveillance personnel with important information about potential regulatory violations, and better enable them to investigate, report, or halt suspicious or manipulative trading activity."[4]

We do not believe that broker-dealers' current post-trade monitoring practices should be changed under the Access Rule. As a general matter, broker-dealers currently have in place compliance systems to surveil customer trading at the end of the trading day or the following trading day for potential violations or patterns and practices that could be problematic. This is the case whether the trading results from the manual or electronic submission of orders by the customer. Broker-dealers for the most part do not conduct real-time post-trade surveillance of such trading because it is difficult and cost-prohibitive to discover violations or patterns and practices as they occur. We see no reason why such surveillance should be expected under the Access Rule merely because order flow comes from Direct Market Access or Sponsored Access. Moreover, regardless of the means of order submission, detection of "suspicious or manipulative trading activity" by necessity requires examination of trading activity over a period of time in order to detect, as examples, (a) problematic trading patterns or (b) trading that might be on the basis of material, non-public information. In addition, the likelihood that such real-time surveillance would discover such trading activity is greatly reduced in the case of clients that use multiple broker-dealers. Accordingly, we request that the Commission clarify that the Access Rule does not require broker-dealers to change their current monitoring practices such that, for example, they would be required under the rule to conduct real-time surveillance of their clients' trading activity for rule violations.

D. Sponsored Access Versus Direct Market Access

We support the SEC's implicit acknowledgement that there is nothing inherently wrong with a broker-dealer providing Sponsored Access to customers where the broker-dealer employs satisfactory pre-trade risk management controls and has processes in place such that the broker-dealer is able to monitor post-trade the trading activity that is occurring under its market identifier. Indeed, we note that all forms of market access typically involve elements of "home-grown" technology and technology that is built by or licensed from third party technology providers. The critical element in providing market access, whether described as Direct Market Access, Sponsored Access, proprietary trading or traditional agency brokerage, is that the broker-dealer has in place satisfactory pre-trade and post-trade risk management controls and processes.

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[4] See Proposing Release at 4014.

Consequently, the key distinction in our view is whether a sponsoring broker-dealer is capable of defining and implementing adequate pre-execution controls and receiving real-time or close to real-time post-trade reports and order information when a customer utilizes a third party's software and order routing infrastructure. So long as the sponsoring broker-dealer is able to implement such controls and checks in a Sponsored Access arrangement, then such an arrangement should be treated no differently under the Access Rule than a Direct Market Access arrangement would be treated. We suggest that the Commission provide confirmation of this point if it adopts the Access Rule.

E. Obligations of the Execution Venue

The Access Rule would require broker-dealers to implement risk management controls and supervisory procedures reasonably designed to ensure compliance with "all regulatory requirements," which are defined as "all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access." The Access Rule also would require broker-dealers to implement controls and procedures reasonably designed to prevent the entry of erroneous orders. The Commission should take into account that in certain cases, it is the execution venue, and not the broker-dealer, that is best situated to implement such controls and procedures.

In particular, we believe that the Commission should consider whether monitoring for compliance with certain regulatory requirements is more appropriately and efficiently conducted by the exchanges rather than the broker-dealers with market access. For example, with respect to exchange trading halt rules, where broker-dealers may not be immediately aware that a trading halt has been declared for a particular security, it would be most efficient to have the relatively small number of exchanges build appropriate preventative controls rather than the much larger number of broker-dealers. Indeed, exchanges already have in place systems designed to block orders for a security subject to a trading halt from being executed. Similarly, with respect to orders not reasonably related to the current market, exchanges are better positioned than broker-dealers to prevent such orders from being executed. In this regard, the stock exchanges already have developed uniform standards for determining when a transaction is clearly erroneous.[5] These uniform standards could be used as a basis for designing exchange-level filters to reject orders that are not reasonably related to the current market.[6] There may be other regulatory requirements that fit within this

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[5] See, e.g., FINRA Regulatory Notice 10-04 (discussing FINRA's rules for resolving clearly erroneous transactions). We note that the options exchanges do not have uniform standards for erroneous transactions. We request that such standards be developed and used as a basis for designing exchange-level filters to reject options orders that are not reasonably related to the current market.

[6] We note that under the recently-adopted short sale alternative tick test rule, a listing market is required to determine and notify its plan processor if the price of a covered security (i.e., an NMS stock) has decreased by 10% or more from the covered security's prior day's closing price. See 17 CFR 242.201(b)(3). The Commission indicated in the adopting release for the rule that the listing markets should have procedures to respond to anomalous or unforeseeable events that may impact a covered security's price, such as an erroneous trade. See Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) at 11258. In other words, the listing markets are tasked under the new short sale rule with preventing erroneous trades from triggering the price test in the rule. This further supports the position

category where the destination exchange is the best party to implement a particular control. Accordingly, we request that the Commission modify the Access Rule to lessen the burden on broker-dealers with respect to those exchange rules that are more efficiently and effectively enforced by the exchanges at the point of order execution.

Along these lines, we believe that the Commission should clarify that broker-dealers using exchange-provided risk management systems, including third-party systems provided by or approved by the exchange, should be able to rely on those systems to the extent they would satisfy obligations imposed by the Access Rule. For example, if an exchange offers a system that prevents the entry of orders that are not reasonably related to the current market, a broker-dealer using such a system should be allowed to rely on it to satisfy part of the broker-dealer's obligations under the Access Rule to prevent the entry of erroneous orders. If the Commission agrees with this position, we further believe that such reliance should extend to exchange representations about the activities performed by their systems without requiring further investigation or monitoring of those systems by the broker-dealer. In other words, a broker-dealer relying on an exchange risk management system should not be required to independently verify that the system is performing "as advertised" by the exchange unless the broker-dealer becomes aware of problems with the system.

F. Revisions to Make the Access Rule More Workable and Less Costly

There are certain areas where the SEC should revise the proposed Access Rule to make it more workable and less costly. As a preliminary matter, we note that in the Proposing Release, the Commission estimates that the average initial cost per broker-dealer to develop or substantially upgrade an existing risk control system would be $51,000, consisting of $35,000 for technology personnel and $16,000 for hardware and software. We believe that this estimate is far too low and would represent only a fraction of the costs of developing or upgrading systems to comply with the Access Rule. In this regard, this estimate fails to take into account that the Commission is proposing several other market structure initiatives, such as proposals addressing flash orders and dark pools, which will be more costly to implement individually rather than all at once.[7] We suggest that the Commission consider adopting all contemplated market structure rules concurrently so that firms can undertake the necessary systems changes as a single package. In addition, the significant costs imposed by the proposed Access Rule could be reduced if the Commission adopts the clarifications and limitations on the Access Rule suggested in our letter. The Access Rule as proposed will not be inexpensive or easy to implement, but the Commission can take reasonable steps to reduce its costs without lessening the benefits it seeks from the rule.

Another aspect of the proposed Access Rule that would add unneeded burdens and costs, with no perceivable additional regulatory benefit, is the requirement that the Chief

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that exchanges are in the best position to prevent erroneous orders from being executed, as any exchange that is a listing market will be required under the new short sale rule to have mechanisms in place to prevent erroneous trades from triggering the price test in the rule.

[7] See Securities Exchange Act Release No. 60684 (Sept. 18, 2009), 74 FR 48632 (Sept. 23, 2009) (addressing flash orders); Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208 (Nov. 23, 2009) (addressing dark pools).

Executive Officer (or equivalent officer) of a broker-dealer providing market access certify on an annual basis that the broker's risk management controls and supervisory procedures comply with the Rule and that the broker conducted a regular review thereof. The Commission states in the Proposing Release that it is critical that a broker-dealer with market access charge its most senior management with the responsibility to review and certify the efficacy of its controls and procedures at regular intervals.[8] DBSI questions the need for a separate CEO certification for market access policies and procedures. FINRA Rule 3130 already provides for senior management certification of compliance efforts. This certification would of necessity include efforts to comply with the Access Rule. A separate CEO certification for the Access Rule would involve additional costs and time to prepare a certification for a single rule. We think it is an unwise precedent for the Commission to start down the road of requiring CEO certifications for distinct rules, as almost every significant rule could then justify the imposition of a separate CEO certification. We therefore submit that it is preferable and sufficient to rely on the fact that the annual certification under FINRA Rule 3130, which by its terms covers "applicable FINRA rules . . . and federal securities laws and regulations," would also cover the Access Rule.

III. Conclusion

DBSI appreciates the opportunity to comment on the proposed Access Rule. We believe that if the Commission makes the changes we note above, the Access Rule will continue to serve its proposed purpose without imposing unnecessary, unclear, and costly obligations on broker-dealers subject to the rule. Please do not hesitate to contact me at (212) 250-5676 if you have any questions about our comment letter.

Sincerely,

C.O.

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[8] See Proposing Release at 4015.