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April 1, 2010

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

**Re: Comments Regarding Securities Exchange Act Release No. 61379  
(File No. S7-03-10) Risk Management Controls for Broker or  
Dealers with Market Access**



GETCO

Dear Ms. Murphy:

I. Introduction

Global Electronic Trading Company (“GETCO”)<sup>1</sup> appreciates the opportunity to comment on the above referenced proposal regarding risk management controls for broker-dealers with market access (the “Proposal”). Before discussing the details of the Proposal, GETCO believes it is important to note that under the current market structure, our capital markets function at a very high level. Indeed, it has been our experience that even though the U.S. cash equity market structure has dramatically changed over the last decade, the current regulatory regime has matured and adapted to foster growth, promote transparency, product innovation, and competition.

As a result of this regulatory environment, many firms, including GETCO, have invested heavily in technology and human capital to create businesses that compete to provide liquidity at historically low cost to investors. GETCO and its competitors facilitate price discovery, reduce volatility, and help maintain orderly, liquid markets for investors. As a result, investors have the ability to efficiently transfer their trading or portfolio risk—even in times of significant stress and volatility.

For example, during 2008’s financial crisis, opaque and complex OTC derivatives caused a panic in credit markets world-wide. While it is hard to overstate what the financial crisis did in terms of harming investor confidence, it is important to

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<sup>1</sup> GETCO, with offices in Chicago, New York, London and Singapore is a privately-held, electronic trading firm that provides liquidity to exchanges and Alternative Trading Systems (“ATSS”) in the US, Europe and Asia. GETCO, an early entrant in electronic trading, utilizes automated trading models to trade on various exchanges and ATSS.

highlight the fact that our markets functioned exceptionally well in times of great uncertainty, anxiety and volatility. Markets opened each day with firm prices and liquidity. In previous instances of market stress, communication broke down and markets stopped functioning, and it was difficult, if not impossible, to trade. By contrast, in the 2008 crisis asset prices may not have been ideal, but the markets themselves held up remarkably well.

Despite the current strengths of our capital markets, GETCO fully supports the goal of reducing systemic risk in the securities trading markets and believes that implementing uniform, system-wide risk control and monitoring requirements are an important mechanism for furthering that goal. We believe, however, that certain aspects of the current Proposal should be modified as discussed herein.

## II. General Observations Regarding the Proposal



As proposed, new Rule 15c3-5 would require a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through the use of its market participant identifier (“MPID”) or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks related to market access. The proposed rule requires specific risk management controls and supervisory procedures, including controls that are reasonably designed to:

- Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer,
- Prevent the entry of clearly erroneous orders,
- Prevent the entry of orders unless there has been compliance with all pre-trade regulatory requirements,
- Prevent the entry of orders for securities by a market participant who is restricted from trading those securities,
- Permit access only to persons and accounts pre-approved and authorized by the broker-dealer, and
- Assure that appropriate surveillance personnel receive immediate post-trade execution reports.

With respect to broker-dealers trading for their own account, the Proposal generally confirms the existing regulatory framework and establishes minimum expectations for risk management at all firms. GETCO supports this aspect of the proposal as it creates common expectations for all firms to police themselves in order to limit potential market impacting events.



### III. GETCO's Views on Specific Aspects of the Proposal

#### 1. Significant Market Participants Should Not Be Able to Avoid Risk Controls Due to Registration Status

GETCO believes that regulation of market access is an important tool in limiting risk to the financial markets. GETCO supports the Commission's goal of ensuring that those with market access are not able to trade without their orders being subjected to effective pre-trade financial and regulatory risk management controls and supervisory procedures.

Certain market participants that account for substantial trading activity may access exchanges and ATSS with limited pre-trade risk checks and with limited visibility into their trading by regulators and sponsoring firms. The risk of unfettered access to the equity markets is likely mitigated by the sponsoring firm as well as the sponsored firm's own risk management systems. A uniform set of obligations would ensure that the market is better protected from systemic risks that any one participant could create. Many sponsored firms that access the equity markets directly are not required to be registered with the Commission or be a member of any securities self-regulatory organizations ("SROs"). However, unregistered market participants pose the same risks as registered broker-dealers. Therefore these participants should be subject to the same obligations as broker-dealers when trading in a sponsored capacity.

GETCO supports the Commission's efforts with Rule 15c3-5 to establish "a single set of broker-dealer obligations with respect to market access risk management controls across markets . . . that would provide uniform standards that would be interpreted and enforced in a consistent manner and, as a result, reduce the potential for regulatory arbitrage."<sup>2</sup> We also believe that to eliminate regulatory arbitrage, Rule 15c3-5 should be formulated so as to not permit market participants to avoid the application of pre-trade risk management controls and supervisory procedures based solely on the market participant's SEC registration or SRO membership status (or lack thereof).

#### 2. All Market Participants Should be Required to Have and Use Unique MPIDs When Accessing Market Centers by Means of Direct or Sponsored Market Access

Each market participant, regardless of whether it is a broker-dealer, should be required to have and use a unique MPID when entering orders on market centers through direct or sponsored market access and should not be permitted to share a broker-dealer's or another market participant's MPID.

GETCO believes it is critical to the Commission's and the SROs' ability to effectively surveil the securities markets that all market participants use unique

<sup>2</sup> Securities Exchange Act Release No. 61379, 75 FR 4007 (January 26, 2010) at 4010.



MPIDs when accessing the markets directly so that the securities regulators have a complete and full picture of the trading activity of all market participants. While we do not believe that it is important for the public or other market participants to have such information, we do not see how the markets can be effectively regulated unless the Commission and the SROs have at their ready disposal a complete trading audit trail that they can access on an automated basis in order to detect and pursue improper or manipulative trading by those using direct and sponsored market access. Without unique MPIDs for each and every market participant who uses direct or sponsored market access, regulators would have to utilize time-consuming processes to break down the trading records of broker-dealers who provide direct and sponsored access to their customers using the broker-dealers' MPIDs into customer order flow on a manual basis. To protect anonymity, orders can be publicly displayed to the market under an exchange's or ATS's MPID, but the orders should be entered onto the exchange or ATS under each market participant's unique MPID so that an effective audit trail is created that regulators can utilize on an automated basis rather than being forced to manually recreate underlying customer order flow from broker-dealers' records.

3. Proposed Rule 15c3-5 Should Allow for Allocation of Risk Monitoring Function Amongst Broker Dealers

When market access is contracted between registered broker-dealers, then we believe that Rule 15c3-5 should permit the pre-trade risk monitoring function to be allocated amongst the various broker-dealers that may touch an order from the point of order entry through to execution rather than requiring each broker-dealer that touches an order prior to execution to separately and independently apply its own pre-trade risk filters. Having an order subjected to at least one set of robust, pre-trade risk management controls should suffice and would reduce redundant filtering that would add undue cost and unnecessary friction into the system. The broker-dealers who are parties to an order being processed through to execution should be required to contract amongst themselves as to which entity is obligated to apply the financial and regulatory risk controls and supervisory procedures that will be required by Rule 15c3-5, including which entity will perform the pre-trade risk management functions.

One example that illustrates the above point is the idea that the sponsoring firm must have "direct and exclusive control" of the authentication of users of the sponsored broker dealer's system. The technology associated with modern trading can be extremely complex to implement and employ. In a sponsored access arrangement between two broker-dealers, this complexity makes requiring the sponsoring broker dealer to have "direct and exclusive control" over the sponsored broker dealer's authentication process unrealistic because, in order to have direct and exclusive control over the sponsored broker-dealer's authentication process, the sponsoring broker dealer would very likely need to have direct and exclusive control of the sponsored broker dealer's entire trading system. A more efficient and realistic alternative would be an arrangement whereby the sponsoring broker dealer takes responsibility for monitoring and managing the credit and capital thresholds of the



sponsored broker dealer, while the sponsored broker-dealer remains responsible for applying the required risk management controls and supervisory procedures with respect to the sponsored broker-dealer's trading systems and customer order flow.

4. Exchange and ATS Routing Brokers Should be Exempted

A broker-dealer that is affiliated with (or which contracts with) a securities exchange or an ATS should be exempted from proposed Rule 15c3-5's requirements with respect to orders that such broker receives solely for purposes of routing the orders to a better priced away market. Such routing brokers do not present the type of risks that proposed Rule 15c3-5 is designed to prevent. If the Commission adopts the pre-trade risk controls requirements for broker-dealer that provide market access to others, all orders received by an exchange or ATS routing broker would have already passed through the pre-trade risk filtering controls of another broker-dealer subject to Rule 15c3-5 prior to being received and routed by the routing broker. Thus, it would be duplicative and would inject unnecessary costs and frictions into the system to also require purely routing brokers, without customers of their own, to also impose pre-trade risk controls and supervisory procedures on orders that are simply being routed to an away market. Finally, the routing broker would not necessarily be in a position to verify on a pre-trade order-by-order basis whether certain regulatory requirements were met when the order was originated, such as compliance with Regulation SHO or applicable margin requirements.



5. ATSs Should Not Be Required to Implement Their Own Pre-Trade Risk Management Controls and Supervisory Procedures

The Commission also asks in the Proposal whether ATSs, in their capacities as broker-dealers, should be required to implement risk management controls and supervisory procedures designed to manage risks associated with non-broker-dealers that subscribe to and have access to the ATSs.

To prevent unregulated market participants from seeking to use ATSs to avoid the risk management controls and supervisory procedures of proposed Rule 15c3-5, GETCO believes the Commission should require that only registered broker-dealers that are themselves directly and fully subject to the requirements of Rule 15c3-5 be permitted to subscribe to and directly access the facilities of ATSs. If such a requirement were implemented, unregulated market participants would only be able to access an ATS's facilities through a registered broker-dealer that would be required to apply pre-trade risk management controls and supervisory procedures to the orders of its non-broker-dealer customers that wish to trade on the ATS. This would eliminate an important regulatory gap with respect to the use of ATSs to access the securities markets by ensuring that no market participant could access the markets on an "unfiltered" basis by trading through an ATS rather than on an exchange, where only exchange member broker-dealers can directly access the exchange's facilities.

## 6. Protecting Against Erroneous Transactions

GETCO would also like to provide comments on preventing “erroneous” transactions. It is critical that broker-dealers have robust systems and controls in place to significantly reduce the chance of an erroneous order reaching the market. Nevertheless, because traders are either manually entering orders or programmers are writing the software that enters orders, it is inevitable that human error will send erroneous orders to the markets.

GETCO has many protections in place to prevent erroneous orders, and we routinely look for ways to upgrade our systems and procedures. However, because it is all but impossible for broker-dealers to completely eliminate every possible scenario that could cause an erroneous order, we believe it is also important for market centers—exchanges and ATSS—to implement protections that reject erroneous orders (e.g., improperly priced orders at a certain pre-defined threshold from the current market) that reach the market centers. If the market center and the member broker-dealer both bear some responsibility for reducing the occurrences of erroneous orders, there is a greater likelihood that the frequency of erroneous orders being executed will be reduced.



GETCO

GETCO also believes that exchanges should continue to evaluate ways of refining their clearly erroneous rules and policies to provide market participants with greater certainty associated with erroneous trades in the markets.<sup>3</sup> For example, GETCO would support market centers adopting a reasonable “adjust only” policy (where practical) regarding the handling of erroneous transactions coupled with a pre-defined threshold. There is tremendous risk created in the system for many market participants when an erroneous trade occurs because the transaction creates uncertainty regarding each firm’s overall position. This uncertainty becomes even more problematic during periods of high volatility in the markets. During periods of heightened volatility, liquidity in the market may be reduced when market participants limit their trading until they are able to determine their positions, or volatility may increase further because of speculative hedging being done to protect unknown positions. The adoption by the exchanges of an “adjust only” policy would serve to reduce such instances of widespread position uncertainty amongst market participants, which would limit the negative impact of erroneous orders on the market.

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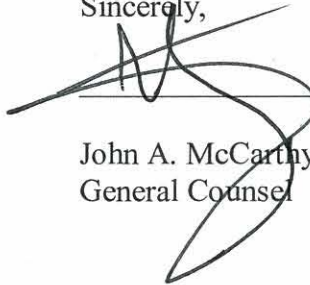
<sup>3</sup>

A good example of this policy approach is the Commission’s recent approval of new exchange rules regarding the adjudication of potential clearly erroneous transactions. The rules provide a consistent standard across market centers and reduce uncertainty about what happens to a trade regardless of what exchange executes the trade. See SEC Press Release, *SEC Approves New Exchange Rules for Breaking Clearly Erroneous Trades*, dated October 5, 2009.

GETCO supports the Commission's goals of enhancing the risk management controls and supervisory procedures relating to market access and believes such efforts will help mitigate systemic risk. For the reasons discussed above, however, we believe that certain aspects of proposed Rule 15c3-5 should be modified.

GETCO appreciates the opportunity to submit these comments. Please do not hesitate to contact us at (312) 931-2200 if you have any questions regarding any of the comments provided in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. McCarthy", written over a horizontal line.

John A. McCarthy  
General Counsel



GETCO