



Penson Financial Services

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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: File Number S7-03-10, Risk Management Controls for Brokers or Dealers
with Market Access

Dear Ms. Murphy:

Penson Financial Services, Inc. ("Penson") appreciates the opportunity to comment on proposed Rule 15c3-5, that would require broker-dealers with access to an exchange or alternative trading system ("ATS"), either as a result of being a member or participant ("market access"), to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with such market access. Penson, the third largest clearing firm in the United States,¹ and its affiliates currently provide execution and clearing services to hundreds of active, retail and institutional broker-dealers, including market access to several exchanges and ATSS.

As a supporter of appropriate risk management controls and supervisory procedures, Penson welcomes progress towards the creation of consistent policies and procedures across the various exchanges and ATSS. Penson supports the notion that market activity should be subject to proper controls and should pass through the risk management controls of a regulated broker-dealer before reaching the market. As regulated entities, broker-dealers are required to meet certain regulatory, financial and risk management requirements, a practice absent in "naked" market access by non-regulated entities.

While Penson recognizes that certain financial and regulatory risks exist in connection with market access, Penson believes that restrictions on market access by broker-dealers, specifically clearing firms, to other broker-dealers should be explicitly excluded from proposed Rule 15c3-5 since broker-dealers are subject to rigorous rules and regulations. Imposing restrictions on entities that are already subject to regulation would likely only

¹ Penson ranks as the third largest clearing firm based on number of correspondents. See *Investment News*, "U.S. Clearing Firms Ranked by Broker-Dealer Clients," December 20, 2009.

create duplicative controls and regulatory confusion and would not likely protect investors or the marketplace.

Market Access of Broker-Dealers

Penson currently provides market access to broker-dealers who are subject to the oversight of the Securities and Exchange Commission (the "Commission"), self-regulatory organizations ("SROs") and their own designated examining authority ("DEA"). As noted in Penson's letter to the Commission in response to the proposed amendments to NASDAQ Rule 4611,² any proposal to institute additional risk management controls should exclude imposing duplicative restrictions on the market access of broker-dealers who are already subject to adequate regulatory oversight and control. In the Commission's request for comments to proposed Rule 15c3-5, the Commission inquired as to whether the proposed rule should distinguish a broker-dealer who provides another broker-dealer with market access. Penson believes the proposed rule should make such a distinction. When a broker-dealer provides market access to another broker-dealer, the Commission and the applicable SROs and DEAs continue to maintain regulatory oversight on the "sponsored" broker-dealer. Although the trading activity of the sponsored broker-dealer would be routed through the exchange member or the ATS participant's market participant ID ("MPID"), the activity of the sponsored broker-dealer is identifiable and is subject to such sponsored broker-dealer's regulatory requirements. As a result, the sponsored broker-dealer, as a direct regulated entity, is independently held accountable for such activity, and the activity can be referred to the Commission or the applicable SRO or DEA.

If the proposed rule is not revised to exclude the market access of another registered broker-dealer, the rule should, at a minimum, permit a broker-dealer that grants market access to a sponsored broker-dealer to reasonably rely on the sponsored broker-dealer's financial or regulatory risk management controls and supervisory procedures. The Commission has allowed similar concepts in Regulation SHO locate requirements and Regulation NMS intermarket sweep order routing arrangements.³ Proposed Rule 15c3-5, as drafted, would require a broker-dealer who provides market access to a sponsored broker-dealer to implement risk management controls that are duplicative of the risk management controls required of and provided by the sponsored broker-dealer, a result that Penson believes the Commission did not intend. Such duplicative controls would not likely protect investors or result in marketplaces being operated in a safer manner.

² In response to NASDAQ's proposed amendment to Rule 4611, Penson recommended that any sponsored access regulation take into account existing laws and regulations and the regulatory oversight currently provided by the Commission, SROs and DEAs. Penson also urged the Commission to exclude, from NASDAQ Rule 4611, the sponsored access of broker-dealers or revise the Rule to take into account the current oversight of broker-dealers and whether more efficient means of supervision by the Commission, SROs and DEAs exist. See letter from Nicole Harner Williams to Elizabeth M. Murphy dated February 29, 2009.

³ Regulation SHO, Rule 203(b)(2)(i) provides an exception to the locate requirement for short sale orders received by a registered broker-dealer from another registered broker-dealer. Additionally, a conduit routing structure is permitted under Regulation NMS Rule 611(c) so long as the originating broker-dealer and the conduit broker-dealer delineate who will perform the necessary intermarket sweep order routing functions and the originating broker-dealer remains the responsible broker-dealer.

Clearing Firms

As providers of execution, clearing and settlement services to broker-dealers, clearing firms are already responsible for the trading activity of their correspondent broker-dealers regardless of the method by which that order is presented to the marketplace as this function is fundamental to the role of clearing firms. Market access for registered broker-dealers allows customers of such registered entities to receive execution and clearing efficiencies. Clearing firms must already guarantee the trading activity of their correspondents and providing market access to other registered broker-dealers does not increase a clearing firm's existing obligations. To the extent a clearing firm provides market access to an exchange or ATS, but does not provide the related clearing or settlement services, the underlying clearing firm of that sponsored broker-dealer remains responsible for such activity and its monitoring and surveillance systems and procedures continue.

Execution Efficiencies

Broker-dealers utilize Penson's market access primarily because such access provides execution efficiencies, including the extension of tiered pricing offered by exchanges and ATSS. By combining order flow of its correspondent broker-dealers, Penson is able to increase volume, benefit from a lower priced tier and provide savings to correspondent broker-dealers and their customers. These savings benefit a diverse pool of market participants, including professional and high frequency trading groups as well as online retail customers, institutional broker-dealers representing mutual funds, pension plans and other public investors, exchange routing broker-dealers and retail investors. The proposed rule would likely eliminate these savings by prohibiting a broker-dealer from using its clearing firm's MPID to access the market simply to reduce transaction costs. The increased execution costs for investors and the potential decrease in the ability of broker-dealers to more effectively compete with larger firms will undoubtedly harm such investors and the marketplaces themselves. Any cost benefit analysis of proposed Rule 15c3-5 by the Commission should consider the substantial increase to execution costs and the impact of such costs to investors.

Exchange Provided Tools

When evaluating which market participants should bear responsibility for providing safe and effective marketplace access under proposed Rule 15c3-5, Penson urges the Commission to consider the involvement of exchanges and ATSS. Penson believes that exchanges and ATSS may be in the best position to assist in developing and implementing system-wide monitoring tools. Broker-dealer exchange members and ATS participants have willingly accepted responsibility for the trading activity of the entities they "sponsor" as a requirement for providing market access. However, all market participants, including exchanges and ATSS, need to accept appropriate and commensurate responsibility for ensuring a safe and effective marketplace. Exchanges and ATSS should be encouraged to provide such tools, and exchange members and ATS participants should be able to rely on these tools to complement their own risk management controls and supervisory requirements. In addition, exchange or ATS provided monitoring tools should be reasonably designed to interact with tools provided by other exchanges or ATSS thereby allowing broker-dealers to aggregate a variety of tools into a single product.

Summary

For all of the reasons noted above, Penson urges the Commission to revise proposed Rule 15c3-5 so as to not require a broker-dealer to provide duplicative risk management tools and supervisory procedures so long as such tools and procedures are being provided by another registered broker-dealer. Requiring duplicative risk management tools and supervisory procedures reduces market efficiency, increases execution costs and likely fails to mitigate any financial, regulatory or other risks associated with market access. Penson urges the Commission to consider these recommendations and appreciates the opportunity to share its thoughts on the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Williams". The signature is written in a cursive, flowing style.

Nicole Harner Williams
Vice President, Associate General Counsel
Penson Worldwide, Inc.