
SEC Proposes Broad Changes for Broker-Dealers with Direct Access to ATSs and Exchanges

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The Securities and Exchange Commission ("SEC" or the "Commission") recently proposed new Rule 15c3-5, which would impose broad new requirements on broker-dealers that have direct trading access to Alternative Trading Systems ("ATSs") and securities exchanges.¹ The proposed new requirements go far beyond the sponsored access rules of the various self-regulatory organizations ("SROs"), including a newly-approved Nasdaq rule,² in several critical respects:

- They apply not only to broker-dealers offering "sponsored" or "direct market" access arrangements to customers or other broker-dealers, but also to broker-dealers' proprietary and general agency trading;
- They would ban so-called "naked access" by sponsored customers and broker-dealers to ATSs and exchanges;
- They would impose market-wide requirements on broker-dealers to establish specific systems and procedural controls relating to financial, regulatory, and other business risks;
- The proposed procedures and controls would need to be under the direct and exclusive control of the broker-dealer providing market access; and
- Broker-dealers would be required to conduct regular (at least annual) reviews of these procedures and controls and "certify" their effectiveness.

Shortly before proposing Rule 15c3-5, the SEC approved Nasdaq Rule 4611 relating to market access arrangements. The Nasdaq rule was the subject of a long-running debate among market participants, and was to serve as the model for similar SRO rule filings related to sponsored and direct market access arrangements. Interestingly, Rule 4611 is far more limited than the SEC's new rule proposal. For example, Rule 4611 permits so-called "naked access" arrangements that the SEC's rule would ban and is limited to "sponsored" and "direct market" access arrangements. Because of its breadth, proposed Rule 15c3-5 would dramatically change the current landscape of electronic trading and electronic access relationships, and therefore is likely to be even more

controversial than the Nasdaq rule. Comments on Rule 15c3-5 are due by March 29, 2010.

The attached PDF: (1) provides an overview of current SRO market access requirements; (2) summarizes new Nasdaq Rule 4611; and (3) describes proposed Rule 15c3-5 and the significant differences between this proposal and current market access requirements. Proposed Rule 15c3-5 and Nasdaq Rule 4611 are part of the Commission's ongoing broad review of national market structure.³

Read the full text of this alert, [SEC Proposes Broad Changes for Broker-Dealers with Direct Access to ATSS and Exchanges](#).

¹ Exchange Act Rel. No. 61379 (Jan. 13, 2010), 75 Fed. Reg. 4007 (Jan. 26, 2010) ("SEC Access Release"), [available here](#).

² See, Exchange Act Rel. No. 61345 (Jan. 13, 2010), 75 Fed. Reg. 3263 (Jan. 20, 2010) ("Nasdaq Release"), [available here](#); *see also* Exchange Act Rel. No. 59275 (Jan. 22, 2009), 74 Fed. Reg. 5193 (Jan. 29, 2009) ("Initial Nasdaq Proposal"), [available here](#); NYSE Rule 123B.30, NYSE Alternext Equities Rule 123B.30, NYSE Amex Rule 86, NYSE Arca Rules 7.29 and 7.30, NYSE Rule 86, CBOE Rule 6.20A, CHX, Article 5, Rule 3, NSX Rule 11.9, BATS Rule 11.3(b), ISE Rule 706, NASDAQ Rule 4611(d), NASDAQ OMX BX Rule 4611(d), NASDAQ OMX PHLX Rule 1094(b)(ii).

³ See, e.g., Exchange Act Rel. No. 61358 (Jan. 14, 2010), 75 Fed. Reg. 3594 (Jan. 21, 2010) ("Concept Release"); Exchange Act Rel. No. 60684 (Sept. 18, 2009), 74 Fed. Reg. 48632 (Sept. 23, 2009) ("Flash Order Release"); Exchange Act Rel. No. 60997 (Nov. 13, 2009), 74 Fed. Reg. 61208 (Nov. 23, 2009) ("Dark Pool Release"). *See also* [SEC's Equity Market Structure Concept Release Highlights Potential New Regulatory Initiatives](#), WilmerHale Client Alert (Jan. 20, 2010); [Proposed Ban of Flash Orders: A New Chapter in the Market Structure Debate](#), WilmerHale Client Alert (Sept. 22, 2009); [Proposed National Market System Changes Aim to Lighten Dark Pools](#), WilmerHale Client Alert (Nov. 19, 2009).

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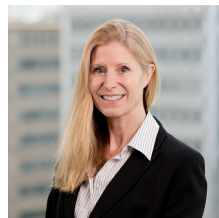
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