

---

## SEC Proposes Consolidated Audit Trail

2010-06-09

### Overview

The Securities and Exchange Commission ("SEC" or "Commission") recently proposed a new rule – Rule 613 under the Securities Exchange Act of 1934 ("Exchange Act") – which, if implemented, would radically change how securities trading information is reported to US securities regulators. Proposed Rule 613 requires national securities exchanges and the Financial Regulatory Authority ("FINRA") (self-regulatory organizations or "SROs") to act jointly in developing a national market system ("NMS") plan to develop, implement, and maintain a consolidated order tracking system or "consolidated audit trail" ("CAT") with respect to trading NMS securities.

The proposal comes on the heels of the unusual market events of May 6, 2010, when at 2:30 p.m., the equity and futures markets experienced a severe drop in prices, falling more than five percent (5%) in a matter of minutes, and recovered only a short time later. However, as discussed in the Proposing Release and underscored in various public statements by SEC Commissioners and staff over the last nine months, prior to the May 6 market event, the SEC was concerned about its ability to effectively and efficiently supervise trading activity in increasingly automated and dispersed markets. Thus, the SEC and its staff have been considering a CAT for some time now and have been working over the past several months to publish the proposal for consideration. The proposed system would be designed to enable the SEC and SROs to better investigate unusual market activity, fraudulent and manipulative market practices, and other potential violations of securities rules and regulations.

Proposed Rule 613 would require the SROs to file jointly with the SEC, within 90 days of approval of the Rule, a single NMS plan to govern the creation, implementation, and maintenance of a CAT and central repository (responsible for the receipt, consolidation, and retention of all data submitted to it) for secondary market transactions in all NMS securities – effectively, exchange-listed securities and listed options. It also would require the plan to include provisions regarding:

- The operation and administration of the NMS plan;
- The creation and oversight of the central repository;

- Clock synchronization;
- Compliance by SROs and their broker-dealer members with Rule 613 and the NMS plan;  
and
- The expansion of the NMS plan to products other than NMS securities.

In effect, the proposed Rule would create a time-stamped electronic audit trail report for the lifecycle of each order involving an NMS security by requiring each market participant that touches the order to report information regarding routing, modification, cancellation, and execution of that order.

As discussed in the attached PDF, the proposed CAT presents many issues. Among the most significant of these are the costs associated with the proposal. The Proposing Release states that the initial costs associated with the CAT would be \$4 billion, and annual costs thereafter would be approximately \$2.1 billion.

Comments on proposed Rule 613 are due by August 9, 2010.

Read the full text of this alert, [SEC Proposes Consolidated Audit Trail](#).

---

## *Authors*



### **Andre E. Owens**

#### **PARTNER**

Chair, Broker-Dealer Compliance  
and Regulation Practice

Co-Chair, Securities and  
Financial Regulation Practice

✉ [andre.owens@wilmerhale.com](mailto:andre.owens@wilmerhale.com)

☎ +1 202 663 6350