



March 29, 2010

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Risk Management Controls for Brokers or Dealers with Market Access;  
Exchange Act Release No. 61379, File No. S7-03-10**

Dear Ms. Murphy:

BIDS Trading, L.P. ("**BIDS**") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "**Commission**") proposed rule to require broker-dealers to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of having access to trade directly on an exchange or alternative trading system ("**ATS**"), including providing sponsored or direct access to customers or other persons.

BIDS Trading, L.P. is a registered broker-dealer and owner and operator of BIDS ATS. The BIDS ATS is an open, flexible utility designed to attract liquidity through an innovative market structure. The BIDS ATS brings buy-side traders, sell-side traders and algorithms together into one single dark pool of liquidity, allowing them to anonymously interact with each other to trade blocks of securities.

## **I. Introduction**

We support the Commission's efforts to regulate market access to ensure the integrity of the markets and to mitigate systemic risk. However, we request clarifications to address several discrete areas of the proposal that could have disparate and unintended impacts on certain legitimate business models. The areas are:

- the requirement that financial and regulatory risk management controls and supervisory procedures be under the "direct and exclusive control" of the sponsoring broker-dealer;
- the manner in which a sponsoring broker-dealer sets credit and capital thresholds;

- the requirement that a sponsoring broker-dealer's controls and procedures assure that appropriate surveillance personnel receive immediate post-trade execution reports; and
- the requirement for an annual Chief Executive Officer ("CEO") certification.

## **II. Direct and Exclusive Control**

The proposed rule requires financial and regulatory risk management controls and supervisory procedures to be under the "direct and exclusive control" of the sponsoring broker-dealer. The proposing release states that broker-dealers would have the flexibility to seek out risk management technology developed by third parties, provided that the third parties are independent of customers provided with market access and the broker-dealer performs appropriate due diligence to help assure that the controls are effective and otherwise consistent with the rule. The application of this statement to systems provided by market centers like BIDS should be clarified.

BIDS, like other market centers, provides risk management controls as a part of the software and order entry dashboard offered to broker-dealer subscribers of the BIDS ATS. Specifically, the BIDS ATS dashboard that is used by a broker-dealer subscriber allows the broker-dealer subscriber to set credit limits with respect to each sponsored market participant, including but not limited to maximum order value, maximum daily buy value, maximum daily sell value, and maximum gross value, etc.

For each of these threshold categories, the broker-dealer subscriber can set two warning thresholds. If any of the warning thresholds are crossed, the BIDS system alerts personnel at BIDS and at the broker-dealer subscriber. Sponsored market participants are prevented from exceeding maximum threshold settings. In addition, the BIDS system provides broker-dealer subscribers with options for setting controls for short selling. Specifically, all short selling can be prohibited, shorts can be permitted only for symbols that are in the broker-dealer subscriber's easy-to-borrow ("ETB") list (which is updated in the BIDS system every day), or shorts can be allowed on symbols that are not on the ETB list, provided that the sponsored customer is required to put a valid locate broker on the applicable order.

Among other things, controls also can be set regarding affiliate trading and restricted symbols (for short sales or other purposes), and broker-dealer subscribers are provided with the ability to react swiftly to changing conditions by disabling customer access at any time, resulting in all open orders for the sponsored customer being cancelled, or cancellation of all orders with respect to all sponsored customers.

The Commission should clarify that a risk management system provided by a market center and located on the market center's systems with control thresholds set by the broker-dealer, similar to the type the BIDS system provides as described above, would satisfy the proposed rule's requirement for "direct and exclusive" control. Risk management software and controls provided by a market center are commonly used in the industry and are an efficient and effective means for broker-dealers to monitor and control their risk exposure. If broker-dealers were not

able to use risk management software and other tools provided by market centers, many other systems would need to be redesigned at great cost with little incremental benefit.

We note the statement in the proposing release that third parties may “supplement” a broker-dealer’s monitoring and operation of risk controls. We believe that allowing the market center to supplement the risk management controls by accessing the settings and reviewing reports is important to ensure seamless operation of trading systems, in particular where the third party that provides the risk management software is another broker-dealer. Thus, the Commission also should clarify that the thresholds set by the sponsoring broker-dealer can be adjusted by the market center provider of risk management software solely at the direction of the responsible broker-dealer.

### **III. Credit and Capital Thresholds**

The proposed rule requires pre-set credit and capital thresholds for each customer for which a broker-dealer provides market access. The Commission should clarify that it would be a reasonable procedure for a broker-dealer to set thresholds with reference to the aggregate trading potential of such customer that is known to the firm on a per market center basis. In other words, if a broker-dealer provides a customer with market access to multiple market centers, the broker-dealer may set thresholds for each market center, directly or through the market center itself. The threshold set at each market center should assume that the maximum limitation will be reached at all other market centers on a daily basis.

### **IV. Post-Trade Surveillance Reports**

The proposed rule requires broker-dealers that provide market access to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from such market access. The proposing release notes that these post-trade reports 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.”

Many buy-side investors use market access in part because of the privacy it affords, as orders are not revealed to the sponsoring broker-dealers. For many investors, avoiding premature disclosure of a trading strategy is a paramount concern. This privacy is not intended to shield manipulation by the buy-side investor, but to forestall front running, piggy backing, or strategy reconstruction by the broker-dealer. Immediate symbol-by-symbol post-trade surveillance raises privacy concerns that parallel the concerns that have been expressed regarding the Commission’s proposal to require real-time post-trade identification of ATSS.<sup>1</sup>

We believe an important role of post-trade reports and surveillance is to provide a broker-dealer with data regarding financial exposure, in particular because the proposed rule requires pre-trade controls and procedures to be based on orders entered, as opposed to executed. Monitoring financial exposures does not require sponsoring broker-dealers to view post-trade reports on a

---

<sup>1</sup> See Regulation of Non-Public Trading Interest, Exchange Act Release No. 60997 (November 13, 2009).

symbol-by-symbol basis. Thus, to address the privacy concerns of many market participants, the Commission should focus the requirement for post-trade reports on real-time aggregated information that allows a firm to assess its financial exposure in real-time on a customer-by-customer basis without revealing sensitive order information.

Other compliance responsibilities can be satisfied by receipt of trade-by-trade data at the end of the day. Requiring symbol-by-symbol information in immediate post-trade reports would needlessly reveal buy-side trading strategies, and does little to assist surveillance for manipulative behavior such as insider trading. Such behavior only can be detected after the fact when the inside information has been publicly released and it becomes evident that a market participant was trading based on this information in advance, or where patterns of trading can be analyzed to try to divine an intent to manipulate.

Alternatively, if the Commission concludes that aggregate real-time or end-of-day data is not sufficient, it should make clear that real-time execution reports should be segregated from ordinary broker-dealer operations. Real-time executions for clients should be handled as confidential information. The reports should only be delivered to compliance personnel with a need-to-know. The sponsoring broker-dealer should be prohibited from using the information for its own business purposes, to data mine, to analyze outside of a risk context, or otherwise reverse engineer to deduce any buy-side trading strategy.

## **V. CEO Certification**

The Commission should clarify that the proposed rule's requirement for an annual CEO certification could be combined with existing review and certification requirements, such as the FINRA Rule 3130 requirement. Combining the annual review and certification requirements would be efficient for firms and also would provide a CEO with an integrated review of a firm's compliance procedures.

## **VI. Disparate Treatment of ATS Structures**

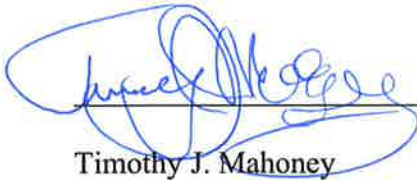
Unless the proposed rule is clarified as we suggest, the rule would have a disparate impact on ATSs depending on the manner by which access is provided. We note that the rule does not propose to apply the market access requirements to ATSs that provide access directly to subscribers, whether those subscribers are broker-dealers or buy-side investors. If BIDS provided access directly to the buy-side traders who use its ATS, BIDS as an ATS would not be subject to the proposed rule. Nonetheless, if BIDS had chosen the business model favored by the proposed rule, BIDS would provide the same strong risk controls to buy-side customers that would directly direct access BIDS as it currently provides to broker-dealers sponsoring access for their customers. These models should be treated similarly. BIDS therefore believes that when the market center is an ATS, the ATS, not the sponsoring broker dealer, should be authorized to provide the required risk controls. Thus, we believe that the Commission should address the concerns outlined above to avoid a disparate impact on a sponsored access business model.

## VII. Conclusion

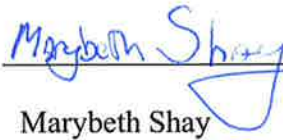
In closing, we support the aims of the proposal but believe the application of certain of the requirements should be clarified to make them workable in the context of the many useful trading centers and arrangements in the equity markets.

Thank you for considering our comments. We look forward to continuing to work with you on these important matters.

Respectfully submitted,



Timothy J. Mahoney  
Chief Executive Officer



Marybeth Shay  
Senior Managing Director  
Sales and Marketing



Vivian A. Maese  
General Counsel and  
Corporate Secretary

cc: Hon. Mary Schapiro, Chairman  
Hon. Luis A. Aguilar, Commissioner  
Hon. Kathleen L. Casey, Commissioner  
Hon. Troy A. Paredes, Commissioner  
Hon. Elisse B. Walter, Commissioner  
Robert W. Cook, Director, Trading and Markets  
James Brigagliano, Deputy Director, Trading and Markets  
David Shillman, Associate Director, Trading and Markets