

MEMO# 24210

April 1, 2010

ICI Comment Letter on SEC Proposal Relating to Market Access Arrangements

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 11-10
SEC RULES MEMBERS No. 28-10
CLOSED-END INVESTMENT COMPANY MEMBERS No. 18-10
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 7-10
ETF ADVISORY COMMITTEE No. 10-10
RISK MANAGEMENT COMMITTEE No. 7-10 RE: ICI COMMENT LETTER ON SEC PROPOSAL
RELATING TO MARKET ACCESS ARRANGEMENTS

The Institute has filed the attached comment letter on the SEC's proposed new Rule 15c3-5 under the Securities Exchange Act of 1934. [\[1\]](#) The proposed rule would require brokers-dealers with access to trading directly on an exchange or alternative trading system ("ATS") to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks associated with such access.

The letter states that while the Institute supports the goals of the SEC's proposal, we are concerned that several requirements of the proposal, if implemented without certain changes or clarification, could lead to unintended consequences for funds and other institutional investors using market access arrangements, particularly regarding the confidentiality of trading information. The letter notes that when funds use market access arrangements they, like other market participants, do so, in large part, to avoid the handling of their orders by the trading desks of broker-dealers so as not to impart trading information to these desks and, in general, to seek anonymity of their trading interest. The letter states that this anonymity could be damaged by the pre-trade and post-trade controls and procedures that would be mandated by the rule.

For example, the letter discusses the proposed rule's requirement that broker-dealer controls and procedures assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access that would identify the applicable customer associated with each such execution report. The letter states that requirements of this kind could impair the confidentiality of fund trading information and could enable the trading personnel of a broker-dealer to deconstruct the trading methodologies of funds provided with market access. The letter notes that a similar concern arises with respect to the pre-trade controls that would be required by the rule where a broker-dealer's controls must prevent the entry of orders that exceed pre-set credit or capital thresholds for each customer as there is a potential for leakage of information to non-compliance staff at broker-dealers who establish the required controls.

To address these concerns, the letter recommends that, at the very least: (1) unless expressly authorized to the contrary by a customer, access to information regarding a market access customer's orders and trades necessary to comply with the rule be limited to broker-dealer compliance personnel directly associated with overseeing market access controls and procedures; (2) that the information required to be disclosed must be relevant to specific risk concerns created by market access; and (3) that the SEC make clear that broker-dealers who obtain information to comply with the rule also have adequate confidentiality safeguards and controls in place to protect such information and that the information be used exclusively for regulatory purposes.

Ari Burstein
Senior Counsel - Securities Regulation

[Attachment](#)

endnotes

[\[1\]](#) Securities Exchange Act Release No. 34-61379 (January 19, 2010), 75 FR 4007 (January 26, 2010) ("Release").