



Securities Industry Association

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March 24, 2006

Robert L.D. Colby
Acting Director
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Regulation NMS Implementation Issues for Broker-Dealers

Dear Mr. Colby:

As you know from our various discussions with you and the rest of the SEC Division of Market Regulation Staff, the Regulation NMS OPR/Access Rule Implementation Working Group (“Working Group”) of the Securities Industry Association¹ (“SIA”) has been working diligently with regulators, exchanges and other market participants to determine the steps that are necessary for successful implementation of the Order Protection Rule (“OPR”) and Access Rule from the broker-dealer perspective and to help resolve any related issues.

The Working Group has very much appreciated our continuing dialogue with you on our Regulation NMS implementation questions and issues. As you know, however, we are still in need of considerable information from the SROs and the SEC Staff in order to proceed further with certain implementation tasks. We know you appreciate this, and the complexity that surrounds implementation of these new rules.

We appreciate your consideration of our thoughts on the implementation steps we believe broker-dealers still need to take, the timing involved, and the specific hurdles we see to this implementation process.

¹ The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. (More information about the SIA is available at: www.sia.com.)

Steps to Complete Implementation and Time Frames Necessary for Broker-Dealers

The following table outlines the steps the Working Group believes are instrumental for successful OPR/Access Rule implementation.² It also sets out the minimum time frames the Group believes are necessary for broker-dealers. We note, though, that while these steps focus on Regulation NMS, it is our understanding that many SROs and other trading centers are developing new market systems (*e.g.*, the NYSE's Hybrid, Nasdaq Exchange/Single Book), which also will require new rule filings/specifications and approvals. We also note that because of all of these systems changes, in addition to the changes required by Regulation NMS, the development and testing process will need to be carefully coordinated to be effective.

Steps for SROs, Other Automated Trading Centers (ATCs), ITS, SIPs, and SEC	Steps for Broker-Dealers	Time Required
Milestone #1: SROs, SIPs, and ITS complete rule filing and SEC approval process.	During these two periods, broker-dealers develop those policies and procedures and implement those systems changes that are not dependent on information still needed from SROs, other ATCs, SIPs, and the SEC.	SROs, SIPs, and ITS reach Milestone #1 by the end of July 2006. Broker-dealers proceed as noted during this period.
Milestone #2: SROs, other ATCs, and SIPs complete development of and issue final technical and systems specifications and policies and procedures (including those re: self-help). SEC provides additional guidance on remaining industry questions/open issues.		SROs, other ATCs, SIPs, and the SEC reach Milestone #2 by one – two months from end of July 2006. Broker-dealers proceed as noted during this period.

² In developing these recommended implementation steps and time frames, the Working Group members consulted with their colleagues on the joint SIA/FIF Regulation NMS Operations/Technical Implementation Working Group. Therefore, it is our understanding that these steps and time frames represent a consensus viewpoint within each firm at this point in time and thereby expand upon certain estimates for such steps and timing that may have been conveyed to you previously by either group.

Milestone #3: SROs, other ATCs, and SIPs “go live” with OPR functionality. At a minimum, SRO systems should be able to support automated quotations, IOC ISOs, and external routing of orders, and SIPs should be able to support identification of automated vs. manual quotes. Modified ITS rules should be in effect.	During these two periods, broker-dealers develop policies and procedures, including internal audit procedures, and their own technical and systems specifications that are dependent on information from SROs, other ATCs, SIPs, and the SEC. Broker-dealers also develop	SROs, other ATCs, SIPs, and ITS reach Milestone #3 three months after Milestone #2 is reached. Broker-dealers proceed as noted during these three months.
SROs and SIPs make modifications as necessary, and support broker-dealers developing and testing their own functionality.		SROs, SIPs, and broker-dealers proceed as noted for an additional three – six months after Milestone #3 is reached by the SROs, other ATCs, SIPs, and ITS.
Milestone #4: Phase I implementation of OPR/Access Rule begins. SROs and SIPs continue to make modifications as necessary, and support broker-dealers with their own functionality. Broker-dealers make modifications as necessary.		Phase I begins at the end of the above three – six month period for all market participants and lasts for one – two months.
Milestone #5: Phase II implementation of OPR/Access Rule begins.		Phase II begins for all market participants at the end of the above one – two month Phase I period.

We expect that if an SRO or other trading center does not have its systems in place for Regulation NMS compliance according to the new rules and/or specifications it disseminated – or if it does not complete its rule filing and approval process or specification dissemination – by the appropriate deadline, then its quotations will not be protected until broker-dealers have had the same period of time for systems development and testing that they had for trading centers that met the appropriate deadline. We also expect that broker-dealers will have this period of time beginning from the time a trading center publishes its specifications for any new market system (*e.g.*, NYSE Hybrid, Nasdaq Exchange/Single Book). Finally, we wish to note that the above time frames could be significantly impacted if other market structure changes and new SRO trading platforms (*e.g.*, NYSE Hybrid, Nasdaq Exchange/Single Book) encounter further unanticipated delays.

Remaining Open Issues

In order to move forward with their preparations for OPR and Access Rule compliance, broker-dealers need to know what compliance, supervision, monitoring and surveillance requirements they should include in their policies and procedures concerning the OPR and Access Rule. In addition, broker-dealers need certain information pertaining to the technological and systems specifications they must develop. In this regard, the following list contains the primary open issues that significantly will impede broker-dealers' ability to develop their own policies and procedures and specifications effectively – in effect, “showstoppers.” We would like to point out, however, that there are other open issues that we are still investigating, and it is likely that some of them also will affect broker-dealers' ability to efficiently and effectively progress towards full Regulation NMS implementation.

Imperative Items

1. SRO responses to SIA's anticipated March 2006 letter to the SROs listing critical information still needed on their markets, new and revised rules, and technical or other systems specifications relating to Regulation NMS in order to incorporate such changed rule requirements and specifications into their own policies and procedures and systems.³
2. Parameters concerning the OPR self-help exception.
3. Permissible trades under the benchmark exception, including:
 - Pricing off the same security in another market (*i.e.*, ETFs, futures, ADRs/ORD)
 - Error trades
 - “Clean-up” order fills at an average price
 - Print protection
 - Resolution of overlap and conflicts with NASD print flags (*e.g.*, “.PRP” and “.W”)
4. Treatment of contingent trades (per SIA's request for exemptive relief for such trades).
5. Latency and timing questions, particularly for block trading and such other issues as:
 - Execution time versus sweep time versus trade report time
 - NYSE Rule 92 and NASD Manning Rule concerns
6. Interaction between Regulation NMS and short sale rules.

³ We will forward to you a copy of SIA's letter to the SROs concerning these issues as soon as it is finalized and sent to the SROs.

7. Clarification on the transition from ITS to Regulation NMS and expectations during the implementation and testing period.
8. Procedures surrounding locked and crossed markets (including proper use of ISOs).

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We appreciate the opportunity we have had to work with you and other members of the SEC Staff during the Regulation NMS implementation process, and we look forward to discussing the above implementation steps, time frames, and open issues with you. If you have any comments or questions, please do not hesitate to contact me at 212.902.8466 or Ann Vlcek, Vice President and Associate General Counsel, SIA, at 202.216.2000.

Sincerely,

Matthew Lavicka
Chair, Regulation NMS OPR/Access Rule
Implementation Working Group
Managing Director, Goldman Sachs

cc: David Shillman, Associate Director, Division of Market Regulation, SEC
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