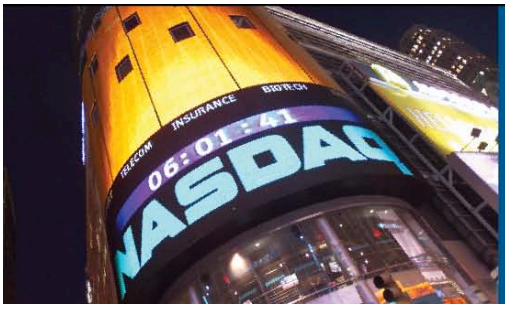
Ted: Thank you for attending. This is actually our second Market Access Rule education event. We hosted a similar event in New York just a few weeks ago and we had a similar great turnout and just fantastic feedback from that event. A lot of questions really came out of that and we took those questions right back and used that for further content and more direction for our panelists here. What was actually interesting was that one of the reporters who was there called us up a few days after the event and said that after she published her article about the educational forum that we had, she Googled Market Access Rule 15c3-5 and said, "I can't find anything else about this, yet, this seems to be one of 'the' most important rules that we're facing in our industry and has a July 14, 2011 deadline. Why isn't there more information out there?" And that's one of the key reasons why we wanted to continue hosting this -- and you'll see a lot more around the educational focus -- to get the word out, to get us all together, to ask those questions, to work through this together.

We are no longer in a post-trade environment for risk management. The SEC has already made up their mind for us on this point with the Market Access Rule. It's not the Sponsored Access Rule - it's the Market Access Rule. That's something that our panelists will be walking us through. A post-trade perspective is really no longer fast enough in today's financial market, especially with higher volumes being processed over disparate systems. And risk management today really requires new attributes to achieve the business goals and comply with these new regulatory initiatives.

I'd like to quote an introduction that Bob Colby, who was past acting head of Trading and Markets at the SEC and is now at Davis Polk, gave at an industry panel that he chaired past Thursday in New York. There was a strong reception to his introduction, so I'd like to share his statement with you. Bob said "the industry's reaction to the new requirements imposed by the Market Access Rule and increasing regulatory scrutiny is similar to the four phases a person goes through when they learn about a serious illness. Phase one, denial; phase two, anger; phase three, fear; phase four, acceptance." So it's denial, anger, fear and acceptance. What Bob continued to share was that "after denying impact to existing business practices and then getting angry about them, most of the industry is now in the fear stage working towards acceptance." Hopefully this hits home to you because that's



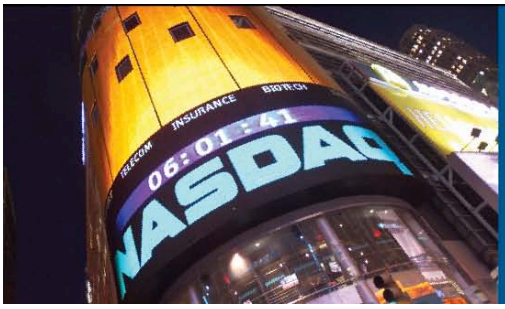
really what we're all facing together.

We appreciate that Davis Polk provided us a short overview of the Market Access Rule that is on your chair. And FTEN and NASDAQ have also provided an FAQ centering around whether your CEO will be prepared to sign-off on your compliance with the Market Access Rule. This is something very unique and somewhat different that the SEC has really put out there that's not usually in these rules. The big question is, will your CEO be ready to sign-off on July 14th of 2011? And they're not just signing off on the process, but the SEC is also requiring them to sign-off on the effectiveness of your Market Access Rule program to make sure it actually works. So these issues and complexities are really why we're all here today.

So FTEN is very pleased to sponsor and provide these educational forums and we'll continue to do so. It's further evidence of FTEN and NASDAQ's commitment to unconflicted risk management solutions for cross-market access.

We appreciate you attending today's event to really help figure out the actual implications for the SEC's Market Access Rule. And so before I turn this over Manisha, I just want to remind and please ask you to silence all of your smartphones and also remind you that one of the reasons why we're here is not just to listen to the panelists, but also to have an open Q&A session. So while Manisha is really going to be guiding and leading the panel here, please don't be afraid, please think through those questions and that's really what we want just to have that interactive session.

So now to get on with this evening's event, I'd like to introduce you to Manisha Kimmel. She is the Executive Director of the Financial Information Forum, that's the FIF, and for those of you who may not know either Manisha or the FIF, it's really a great neutral, unconflicted industry organization that not only just takes the aspects like the Market Access Rule, but really all leading regulatory initiatives and non-regulatory initiatives and has an open dialog. And what's really interesting is there is a FIF working group on market access and if you're not already either a member of the FIF or a part of this working group, feel free to reach out to Manisha to get more information about that. I personally view her



as a leading neutral expert on these matters and that's why it gives us great pleasure to have Manisha be the moderator for this evening's panel.

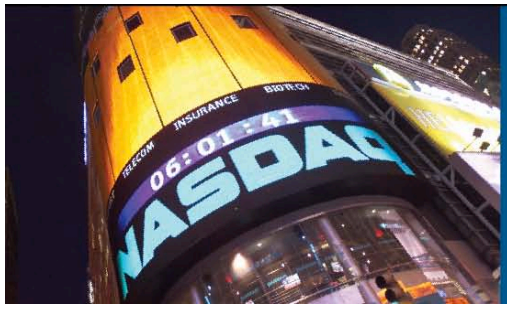
Manisha: Well, I think what we hope to do today is take you through that step from denial to acceptance, take you from the fear of the unknown to the fear of the known. And with me is a great group of panelists. You should have their bios with your materials, but if I could ask each of them to introduce themselves and their role with respect to the Market Access Rule, we can start with questions.

Joseph: My name is Joseph Cangemi. I am the head of Sales and Trading at Global Electronics Group of ConvergEX. I am also the current Security Traders Association (STA) Chairman and I've been involved in the process of the Market Access Rule since it was proposed down in DC on behalf of both ConvergEx and the STA.

Paul: My name is Paul Zubulake, I'm a Senior Analyst at Aite Group which is a research and consulting firm out of Boston. I cover the futures and options market and I have been following this story as well. Our role in this whole process was, we wrote a report – I did not write it, so that's the first fact, but the partner of the firm wrote it and it spawned off an article in the Wall Street Journal, I think it was December of 2009, that said that *The Equity Market is Getting Naked*, I think it might have been called. And this particular article was mentioned in the actual Market Access Rule proposal by the SEC.

Gary: My name is not Irene Halpin and I am not the Executive Director and Assistant General Counsel at JPMorgan. Irene who was supposed to be on this panel unfortunately blew out her eardrum and so could not fly to be here from New York. It's unfortunate she is not with us. My name is Gary LaFever and I'm taking Irene's place on the panel and I am the Chief Corporate Development Officer at FTEN.

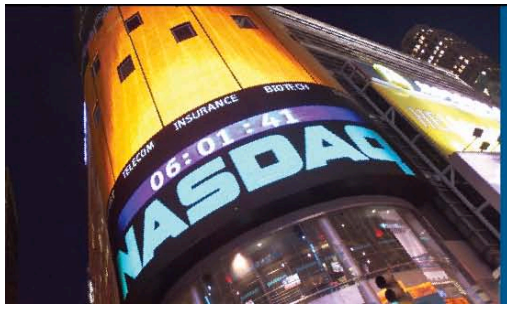
FTEN has been involved in risk management in the financial markets for 10 years and our whole focus is on a cross-market approach. So some people ask, didn't NASDAQ buy you at the end of 2010? They did and I think it's actually a testament to the importance of rules like the Market Access Rule because it's not about advantaging a given exchange or



liquidity destination over others, the whole market is at a point now where cross-market protection is the issue. Ted mentioned earlier that we don't have the luxury anymore to think of risk management as post-trade or even at-trade. In FTEN's comment letter, we actually pushed for at-trade, which is less intrusive than pre-trade. But the SEC said no, it must be pre-trade. So it's up to you guys to figure out what that means. You are the market participants that will help to define what you think is necessary to be compliant. I'm actually here to be as educated as much as anything else about how you react to, perceive and interpret these rules. Because fundamentally it comes down to what you think it's about. But the SEC has answered two questions for us, whether we wanted them to or not. One - it's pre-trade and - Two - it's cross-market. So that means it's real-time and it's incredibly intrusive to the way people do business today.

Manisha: Thanks. Gary started us off on our first question, which is there were a lot of comment letters written with respect to the Market Access Rule and really, in many ways, the final rule does not reflect many of the recommendations the industry asked for. I've asked our panelists to talk about a few of the key challenges raised in their comment letters, starting with Joe, the ConvergEx letters.

Joe: Well, if I actually went through all of the arguments that we posed against the original proposal, we probably wouldn't have much more time for discussion on any other subjects here. We were fairly aggressive down in Washington and in our letter we were very adamant about the proposal as initially proposed, contradicting the historical standards within our industry. The proposal as proposed and eventually as finalized, contradicted all of the contractual relationships that existed previously in our industry. How laws and regulations and rules were applied to broker-dealer, broker-dealer relationships. And it's our principal focus down in Washington, DC and in our letter, it is with direct respect to the obligations between broker-dealers in an exestuation relationship and how it would apply in this market access proposal. Now with that said, a lot of our discussion centered around a comment that Mary Shapiro had made when she made her initial proposal, referencing the idea or concept that you wouldn't lend your car or wouldn't throw the keys to your car to an unlicensed driver and just say go at it, have a good time. And we've kind of used that analogy throughout most of our commentary to take it to the next level. Well, a broker-



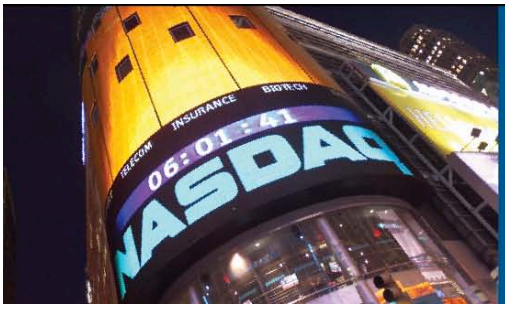
dealer is a regulated entity, it is overseen and it is a licensed driver, and I would throw my keys to another licensed driver if I felt it was a prudent thing to do and he was in need or she was in need of the use of my vehicle, even if it was at a fee, for a fee. So right from the initial proposal on through the discussion period, there was this inherent conflict between their concept of how the contractual obligations between broker-dealers and how they can offset them and how they were historically offset in other agreements within our industry, was being utilized.

Some of the points that we made, the market access broker is less able to establish the appropriate pre-trade credit and other risk management controls with respect to BD clients because they are once removed. They didn't actually know, we'll never know the end client. And in the original proposal it was unclear as to whether – how deep a knowledge the market access provider would have to have of the end investor.

Secondly, we talked about the financial risk component of the – and how it pertained to the contractual relationships. When we compared it to some of the correspondent flip relationships, QSRs, automatic give-ups, such as the AGU agreements, how credit risk is almost immediately passed on in a broker-dealer to broker-dealer relationship under those types of agreements, instantaneously with execution, the financial risk was passed on to the initiating or sponsor broker as the final rule was labeling them. So these are kind of some of the arguments that we put forth.

And then we also wanted to talk about what is direct and exclusive control? How much control can a market access provider have over the technologies provided upstream to customers above? How exclusive can that control be? What was the expectation with respect to that? So those are the major points within our letter and within our conversations down in Washington, that we felt were unfulfilled. There were lots of other nuances in the final rule that we actually did manage to accomplish to get some guidance and leniency on. But those are the ones we think that did not fall(?) the way through and have a success at.

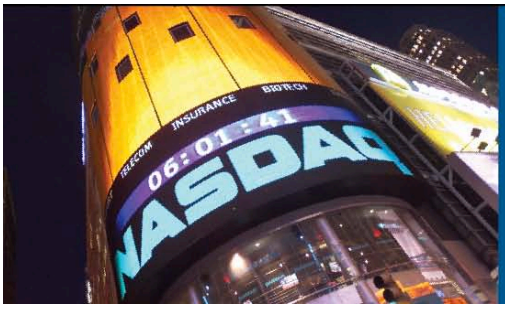
Paul: Well, if you look at the comment letters for this situation, there was a tremendous amount



of them. If you look at other rules that are out there, I don't think you got the feedback that this particular rule had. Now a lot – unfortunately, you cannot read all the comment letters because some of them are just a memo that we had a discussion in so and so's shop. So if you do go try to go through there, you won't be able to see every detail from certain players in the industry. And obviously the Chicago proprietary trading community was very active with the comment letters.

I think what some people were looking for is what everybody always looks for when there's any sort of rule, no matter what your market is, exemptions. And everybody wants to have -- be exempt from the rule. It's okay for somebody else and will I be able to find an area that I can be exempt so I don't have to deal with the complexity and have the compliance staff to deal with it? So we were talking about the broker-to-broker exemption, which I think a lot of people wanted, but did not happen. And another thing we discussed briefly was this is more I guess on the equity option side, is voice brokerage. Not obviously equity markets are pretty much 100% of electronics, but the – and obviously there is some negotiation in block trading, so there still is a voice component out there, but obviously in the hybrid model that the CBOE employs, there is a good amount of voice brokerage, trading going on in the options arena and I don't think that was addressed either. What is pre-trade risk management when it comes to voice?

Gary: And again, one of the interesting things to note here is all these things that we're laying out that the SEC did not put into the rule, they in their 100 -- so it's 138 pages if you get the double spaced, two pages of the rule, 128 pages are why they didn't listen to all the comment letters. And so the things we're tackling about are not in the rule and one would presume the SEC specifically and purposely did not put them in the rule. So we're really kind of whining here collectively, but it's to make the point they chose not to. So a couple of things that we had put in our comment letter is that, they had a concept of let's call it open order exposure that you can't allow a client to exceed a certain level of committed capital or credit. But they wanted you to count every open order against that credit. Well, very legitimate trading strategies can have high cancellation rates. And so that means if I have a high cancellation rate in my ALGO(?), that I'm going to be frozen from trading any further during the day, once my open orders hit that level. And so what a number of people

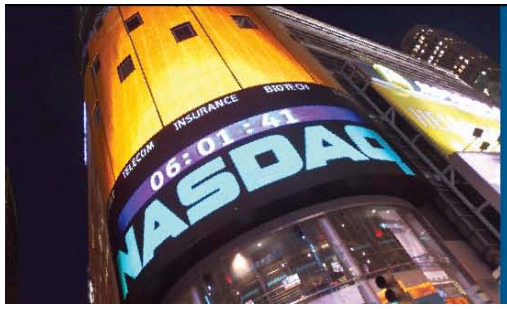


suggested, FTEN was one of them, is what if you looked at more of kind of an algorithmic approach? You actually look at the executed orders. Because that's where the real risk is. And maybe you have some concept of what the overall open order position is, but you look at what's actually happening. What the SEC heard, thankfully, is that you can't just aggregate open orders. But their solution is, let's say inelegant, to put it nicely, they basically said that you can discount the capital associated with every open order, if the client has a history of a high cancellation rate. But you have to constantly look at that to see if it's accurate. Well, that's fine, but if someone had 99.9% cancelation rate yesterday, that would mean that you would discount the capital by one one-thousandth, and now if there's a problem with the ALGO or they've changed their strategy today so they have no cancelation rate, you're giving them one thousand times the capital that you thought you were. So there's just fallacies in the rule as it's written. The question becomes, if you did discount the capital, such as they permit you to, if they actually exceeded the capital, would you still be liable for violation of the rule? So there's all kinds of issues with the rule and so events like this where industry participants can speak their voice and start to discuss and identify weaknesses or ambiguities that have to be clarified, the whole market will benefit. Because for a two-page rule, this thing comes with a heavy weight to the way business is being done currently.

Manisha: And to take it now to the level from here's the rule to here's what we have to do about it, we thought it would be helpful to articulate and talk about the rule in the concept of, or context of several different scenarios. We want to do our first audience interaction by saying, how many people are affected by the Sponsored Access Provider scenario? I think we have enough to go through it.

Male: Oh yeah.

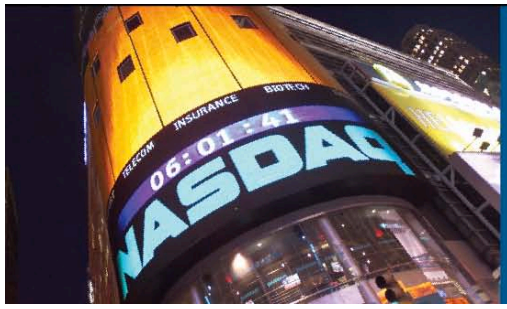
Manisha: Okay. So here's the scenario. The broker-dealer provides sponsored access to a registered broker-dealer client that has no customers of its own, so prop shop, and that client trades equities and options. As far as the burden of who the rule – who has the MPID, it's the broker-dealer providing the sponsored access who is using their name, using their MPID. For each of these scenarios, I'm going to ask our panelists to kind of talk



about what are some of the key decisions and issues they're grappling with. And we will start the sponsored access provider scenario with Gary.

Gary: So one of the things a lot of people were looking for here was a broker-to-broker exemption. So if the broker is allowing you to access the markets with their membership, MPID or mnemonic, what a lot of people thought was if the actual trading entity was a registered BD, that there would be an exemption and that they could use their own risk controls. That is not in the rule. What the rule says is that you have to, as the broker-dealer providing market access, someone is trading under your MPID or mnemonic, you have to be the one that provides the risk management controls and that you have to be independent from the third party. We had someone actually come up before the event tonight and ask a question that a lot of people thought would have had a different answer. If I'm a BD and I developed a trading system and it has risk checks, can I give that gateway with those risk checks to my broker-dealer who's MPID I'm using? I'm not going to touch it, they're going to have exclusive control. And the answer in the final rule was no, because you designed it. So one of the big things here that did not get into the rule was what we referred to, or a lot of people referred to and were hoping to find, as a broker-to-broker exemption. There is a specific permission that you as a broker-dealer can allocate your regulatory obligations to another BD, but those are know-your-client type, it's not capital, it's not pre-trade risk checks for fat fingers and those kind of things. This is a huge change to the way a lot of business is done. I mean the whole tiering and aggregation model could be very much at risk.

Joseph: You know, one of the things I'd just like to point out, we have six scenarios I believe up there, six scenarios that we've highlighted or just plan to discuss, but there were probably a multiple of scenarios right here in that room not reflected on that particular wall. And the reason being is that we all have different makeups of business that we provide solutions for, but we also have a different makeup of customers for which we provide those solutions on behalf of. And each one of those characteristics has to fall neatly into your rules and procedures on how you are going to satisfy this particular rule as initiated here. Come July, the SEC is going to send out reviewers through your SROs and they're going to be looking at this rule and they need to actually understand your business and your customer's



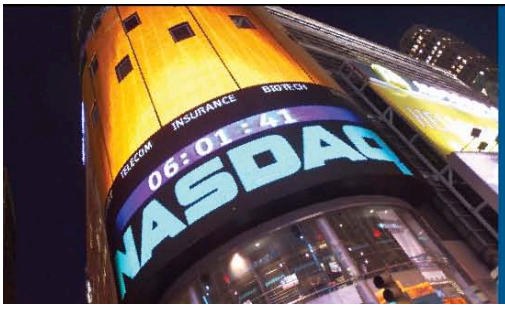
business and match it kind of back to why you built your rules and procedures and how your CEO signed off on these rules and procedures in respect to this particular rule, based on that. So we can't sit here and tell you how to solve your problem, but you need to really do a very deep dive and understand how your business model is particularly set up in the products that you're providing solutions for and to the customers you are providing those solutions for. So I just want you to be aware that no matter what we say here, specifically in your situation, may be slightly different.

And the key to this and I think a lot of pressure is going to be on the SEC themselves, is that to understand that particular side of it. Part of my mantra and my time down in Washington, DC this year, will be talking to them about that specific portion of this rule. How they're going to enforce it, how are their regulators or reviewers going to be looking at BDs and how much time are they going to spend trying to understand why you built your rules and procedures and they may be different than the door right down the hall from you, another BD doing a similar type business, but with maybe a different set of customers. And it's imperative that we all really push back a little bit and be aggressive with these overseers.

Paul: My advice would be to, depending, of course, on your strategy, is look at trading futures. And I know a lot of people obviously in this room do that.

Joe: That will only last so long, too. Dodd-Frank is going to fix that problem.

Paul: Right, and I think that they have enough problems with the OTC markets right now and how that's going to play out. So I don't think – I do agree with you eventually you'll see some sort of mandatory trade risk and I think the exchanges are stepping forward on the futures side, doing that and then requiring everybody to have this, everybody will be required to trade a certain size, etcetera, and you'll have to do that, otherwise you won't be able to trade. But again, if you look at it, or you could trade the spot FX market, there's other markets that your strategies might work in, and if they're going to make the regulatory burden so ridiculous, and if you were taking advantage, if your strategy is taking advantage of buying discounts that were created from sponsored access, and you're going



to lose that edge, you might have to look at other asset classes. So that would be something I would look at.

Joe: You know, I mean this crowd in particular understands the difference between options and equities. I can tell you that probably the same audience in New York had less knowledge of the differences between the option market and the equity market, and I can tell you the crowd down in Washington, DC has no -- absolutely no clue. They think if it's traded, it trades the same way. The operational side of the business in the historical patterns and understanding how markets work and operate, the difference between the dealer markets and the equity markets of today are dramatically different than what their understanding is historically. So there's a lot of education that needs to go on, but I think here in this particular room, you guys have a very good head start because you've always understood, being from a community of the options world, the differences between the two products, and your rules and regs and your procedures, with respect to it, will be distinctly different.

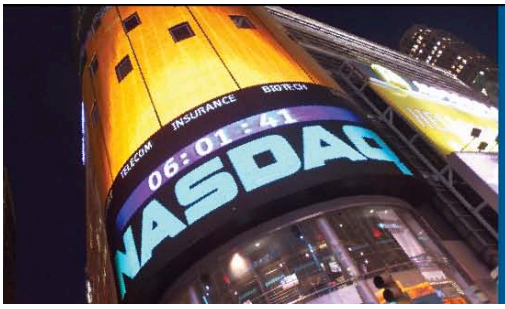
Manisha: Comments, questions on sponsored access…

Joe: Yeah, this should be as interactive as possible.

Manisha: Yes.

Joe: 'Cause I'm pretty much done with all the content I have. Bored them already, all right.

Manisha: Okay. How many are in – let's go to the next scenario. Maybe as we build up, we'll come to some questions I think. I think the one thing about sponsored access is yes, naked access is dead and yeah, so is probably tier ag(?) and again, I'm not sure everybody understood that when the rule was being written. The next scenario is the correspondent clearing firm scenario. And you have our handouts if you want to take notes there, that's – you're welcome to. There's one page for each scenario. In this scenario, and there are several different clearing firm scenarios as Joe mentioned, but this is a scenario where the claim firm executes the order on behalf of the correspondent, using their clearing, the clearing firm's MPID. And the clients are registered broker-dealers with institutional and



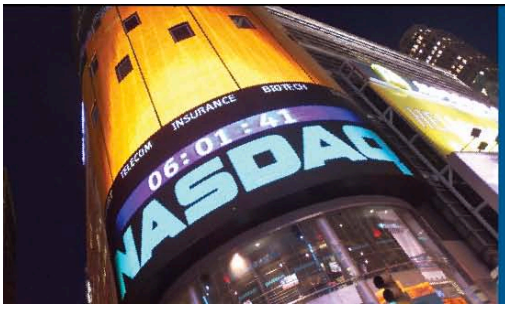
retail clients and clients trade equities options and fixed income. Joe?

Joe: So I mean obviously allocation is allowable to the extent within the rule. So the allocation of your regulatory responsibility is allowable in this particular case. But again, depending on how fully disclosed and the particular product that we're talking about, is going to be relevant when you create your procedures in this particular situation. How much information you have available to you as the clearing and market access member is going to be reviewed by your reviewer technically speaking and going to mandate the level of responsibility that you will have to maintain as the market access broker. So less in this particular case is better, but again, that's not necessarily in the best interests of your business, especially based on the historical standards and the contractual obligations you have in place for your clearing and settlement for those customers and on their behalf. So how much you know of the end customer in this particular case is going to warrant how much of an allocation you can provide. But nonetheless, you're still going to be fully responsible for the financial risk and the erroneous trade function piece of this component as well.

As far as variations, there are instances in these types of relationships where the actual sponsoring broker is actually using their own MPID, but clearing through their clearing arrangement broker. And in these particular cases, you need to be aware that if your order flow is going to an exchange or an ATS, in any capacity, with respect to the piece that's going under your own MPID, you're fully responsible for the piece of the business this rule encompasses. All other portions of that customer flow that you may be sending through that clearing, executing broker-dealer relationship would be the responsibility of your clearing broker. So it's a matter of who's MPID you're executing on a facility that matters in the specific instance of when an order and/or is routed or slice of an order is routed to a specific entity, including an ATS.

Q: So if you use your own MPID, are you still allowed to use your own software risk management or do you have to use a third party risk management software?

Joe: You can use a third party, you can use your own, as long as there is a definitive third-party



solution that has complete control over the risk part of this. If you're clearing broker is taking on the responsibility -- you're executing it for your own MPID?

Q: Yeah. Say you're a member and you use your own MPID and you clear, I don't know, Merrill or Goldman Sachs.

Joe: So you're just using them to clear your trades but using your own MPID then you have full responsibility under this rule and you can create your own risk controls.

Q: And nobody checks whether those risk controls are working?

Joe: Oh, that's good, they will be.

Manisha: Yeah, the SEC would be looking to you to show compliance with the Market Access Rule.

Q: It's your software and it's your responsibility, they're going to check you out.

Joe: That's correct.

Manisha: Yeah.

Gary: One of the things to bear in mind -- and the SEC gives us a great example, although I don't think they meant to -- the Market Access Rule is not the exhaustive statement of what your obligations are, because in that instance, under the Market Access Rule, your clearing firm has no obligations under the Market Access Rule because you're accessing the market under your own. And so under this rule, they're off the hook, it's totally your job. But the reason I raised this is in the very first few pages of the actual final rule, they talk about the Southwest Securities situation a couple years, where they lost like, I don't know, $6 million or something like that, and had to pay a big fine. And they walk through how this rule is going to make that situation safer. In that situation, it's exactly what you describe. Southwest Securities was the clearing firm, but the broker-dealer in question was trading

under their own MPID. And so even that situation doesn't violate the rule, but look what they did to Southwest Securities. So you would be fine under market access having your own system. Whether your clearing firm is comfortable with that is totally removed from this rule.

Manisha: There's another question.

Q: Can we back up a little…

Joe: Sure.

Q: On behalf of my fellow market participants, how is this going to put an end to tiered aggregation?

Gary: I'll take a shot at that. So it's going to make it much more difficult.

Joe: That's correct.

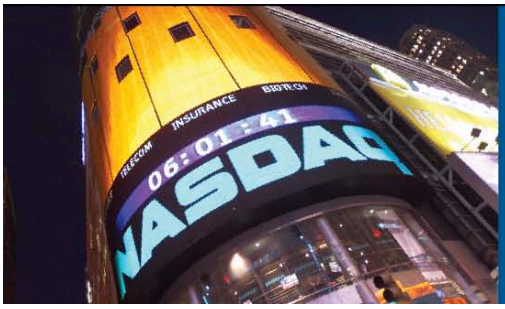
Gary: I think we shouldn't have said it's going to put an end to it. What it puts an end to is a broker-dealer allowing people to use its MPID and have their own controls. That is no more. If you're using the MPID of another party, that MPID owner has to be the one who controls your risk checks.

Q: So let's say I'm going through GSEC, I'm a BD, I'm going through GSEC, and in order to get tiered breaks. And I have their risk checks…

Gary: You're good.

Q: …on a machine that's co-located at an exchange. I'm fine.

Gary: You're fine.



Q: So it's just a matter of whether or not I want to sacrifice any latency?

Gary: Exactly.

Manisha: Yes.

Gary: Right.

Joe: And also, of course, remember, GSEC is also evaluating now their obligations under your current relationship, which are much more dramatic than they were prior to July 14th. So there, and their expenses, obviously, are going to marginally higher. I can't identify by any particular firm how marginally higher they're going to be, but any impact on margins is going to have an impact on the viability of the product. And that's what needs to be focused on.

Q: So this basically comes down to a business decision, not a regulatory decision?

Joe: Correct, yes.

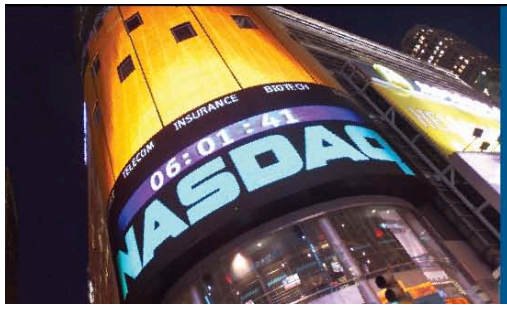
Manisha: Correct.

Joe: Yes.

Gary: Good question.

Manisha: Other questions? One of the things on the correspondent clearing firm example, we mentioned fixed income. Does the rule apply to fixed income?

Joe: The rule applies to almost anything that trades. You should recognize that. It applies to fixed income, it applies to equities options, its going to apply to equity swaps. Any stock that's going to be traded, traded on an exchange, any product that's going to be traded on an exchange, this rule is eventually going to apply to. Now will it apply July 15th in the fixed



income market? Yes, by rule. Does the relationship exist in the fixed income world the way it does in equities and options right now? It's something that each of you needs to evaluate based on your own businesses. In most cases I would say that there are going to be very few direct instances where fixed income is going to be the first priority of our regulators in the oversight of this rule. Primarily because there are no automatic trading systems or ATSs that are actually functionally trading fixed income products right now and for that matter, functionally exchange sights are starting to just evolve to trade fixed income products. So it's part of that introduction and it's going to be an evaluation on each one of your particular BDs and your customers and who you're representing and how you're going to handle that.

Q: When you say that there are no functioning ATSs in the fixed income world, are you including BrokerTec, eSpeed, Garban, GovEx, those different systems?

Joe: Well, there are plenty that are labeled ATSs, I'm not so sure that they are actually executing on behalf of the broker-dealers. I don't know. That's why I'm saying, you have to actually look at your relationships with those ATSs and who's the executing broker on them.

Manisha: But yes, the ATSs are in scope.

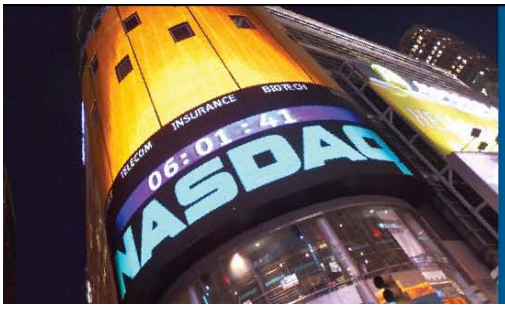
Joe: It would apply. They're in scope.

Gary: And so a question becomes, if you have an order whether it's an electronic trading order or if it's a phone order, what is a pre-trade check?

Joe: Correct.

Q: So if they're using eSpeed, BrokerTec, any of those fixed-income platforms that are very popular that are electronic and they're using a screen to get into it, is it an ATS or is it not?

Joe: It's identified as an ATS by the SEC I believe. And so you're gong to have to have it in your



scope.

Manisha: There's a list of the active ATS filers and their – BrokerTec, for example, is on it. MuniCenter is on it. We spoke with the SEC and those are included. So…

Q: Where is that list?

Manisha: I'll give it to you after this, let me know.

Joe: But actually, you can just go on the SEC webpage.

Q: It's on the SEC website, if you search on the SEC website, you'll be able to find it.

Manisha: Yeah, active reg ATS filers. It's under the Freedom of Information Act…

Gary: One of the questions that I've heard asked, somewhat tongue in cheek is, is it true that (A), the SEC was very naïve in their estimation of where the market was? Because if you read through the text, it says you guys are almost there anyways, this just requires minor tweaks to what you're doing. Or, conversely, are they kind of calling the industry down and saying, you should have been there anyways? Because for the intrusive impact on the industry and the short-timeframe before compliance, we're talking five months and then you're supposed to be in compliance. There's a lot of big questions out there. How do you put a pre-trade check in place in some of these situations when they don't exist today? So that's really what we're trying to highlight and that's why the industry kind of speaking up and saying, look, perhaps if we're all very vocal, then naked sponsored access, which was the SEC's original focus, will be enforced as of July 14th. But if the industry is very articulate in talking about why some of these other things are unrealistic, the SEC might slide the compliance date for other types of products or offerings. And that's why it's so important to get groups like this together and talk through it, because right now, it's all lumped together and you have to be in compliance with all pre-trade checks on July 14.

Joe: One of the experiences that we've had with the SEC is that they are actually mandating

filing an ATS form on products that people generally wouldn't have necessarily anticipated to be an ATS when they built them. So just be aware that there are a lot of ATSs out there that are labeled ATSs and would qualify under this rule, technically speaking, cause they'll be on that list. They don't actually operate in the true function of what an ATS was anticipated to plan, be planned for.

Manisha: Any other comments on the correspondent clearing firm scenario? Questions? Yep.

Q: So with the naked sponsored access, you're saying that we don't have to go out and get our broker-dealer license just to be taken care of under the rule?

Joe: Who is the executing broker?

Q: Well, right now we are the executing broker-dealer.

Gary: You know the old saying, follow the money? In this instance, follow the MPID. Whoever owns the MPID, regardless of their status, is the one who is supposed to have the risk checks, under the Market Access Rule.

Q: Exactly, so do we not need a broker-dealer then?

Gary: In that instance, you don't have to have a broker-dealer. If you had a broker-dealer and you were trading under your own MPID, then you could use your own risk checks.

Manisha: Any other questions? Okay, the next scenario is the one in which the broker-dealer is providing execution only and so in this scenario, the broker-dealer executes orders on exchanges and ATSs using their MPID, they're providing executions, but they are not the prime broker in the case of a hedge fund client or a clearing broker in the case of a broker-dealer client. So that's the limitation of their role within the process. And this is for a client that trades equities and options. Paul?

Paul: Well, I think this crowd is probably on the other side of this question. You guys are the

actual trading institutions, as opposed to the broker-dealer. That's the way I'm looking at it. So I think when it's – you're deciding about the credit threshold, I mean obviously there may be some people on here who are broker-dealers and then they have customer's business going through, but obviously this is the ultimate know your customer, knowing their trading strategy and to be able to decide what the thresholds are going to be, if you're talking about the equity markets and the options market. So I would recommend a major interaction with your clearing broker and if you're on that other side, the same thing, major interactions with your clients and really seeing what their strategies are and I would think to be conservative at first -- and then we're talking about brand-new clients, I'm assuming. So if this is somebody who is new in the business or they're an offshoot from a broker-dealer and they're starting their own shop, I would think that you'd start out conservative and then over time based on performance, credibility, you expand that out. That's all I have on that one.

Manisha: And other panelists, comments?

Joe: Well, that would be the specific scenario where you're really once removed from the ultimate customer, but again, you would be responsible for the financial checks and the pre-trade checks for errors and whatnot and you should be aware that you need to start aggregating or start looking at that broker-dealer's business that you're executing on behalf of, in aggregate, and have pre-trade checks in place that are justifiable to your overseer when they come in to look at your rules and regs, for each independent relationship that you have. So you have to find some algorithmic and/or methodology by which to create a financial limitation for the firms that you're representing in those execution venues, as long as it's your MPID, you're going to have to have some sort of financial rules in front of this and you're going to have to figure out a method that you can easily identify and justify with respect to each one of those relationships.

Manisha: Question?

Q: Maybe everyone here knows this already, but I think it's probably worth the question is, what view of the customer does the market access provider need to have? Is it on a per-

market basis, is it across the entire market and is it across all the instruments or is that on a per instrument at the time? So what exactly do they need to be controlling?

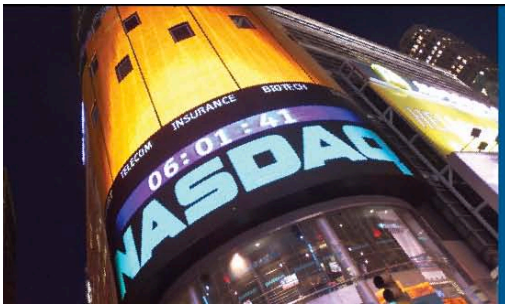
Gary: So you can take a siloed approach and the SEC walks through an example of this in the accompanying text. One of the examples the SEC provides is if you want to use an exchange-based risk management system, and the example they gave is if this particular client – and this example is one asset class – the client is trading in one asset class on three different exchanges, and let's say you wanted to give him $150 million. You would have to allocate a certain amount per exchange -- let's just say 50 each. But what they make very clear is for the risk management at each exchange, you must assume the other two were totally maxed out. So if I want to give this client 150 million in credit, I'm going to basically say I'm using the exchange-based risk management system at each of the three exchanges and at one exchange, they're at 50 million, they cannot trade anymore at that exchange, even if they've traded nothing at the other two. So a siloed approach will work, but you have to make, I'm not going to say arbitrary, but you have to make delineations as to what you're providing. The same thing could occur, I would think, across asset classes. So in aggregate, your policies and procedures would have to show that if I have a client that I only want to trade a total of 150 million across all asset classes, I've allocated a certain component of that to each asset class and within each asset class, I've allocated a component of that to exchanges, if I'm using an exchange-based system, or to siloed systems if you're using those. Obviously, to the extent that you can provide a more holistic risk management answer, you're actually going to have greater capital to use, if that makes sense.

Q: When you say exchange-based system, what do you, may I ask for clarity? You're talking about a system that only considers trading on one execution venue?

Gary: Correct.

Q: So it's not just exchange-based if I trade at ATSs as well, I could do a pro rata...

Gary: You're right. It's a siloed. I shouldn't say exchange-based, it's a siloed, any siloed risk



management solution has to assume that the other siloed risk management solutions are maxed out.

Q: Unless you could reallocate.

Gary: Unless you have a means of reallocating among those, yes.

Q: And you could reallocate dynamically with a view across all the different venues.

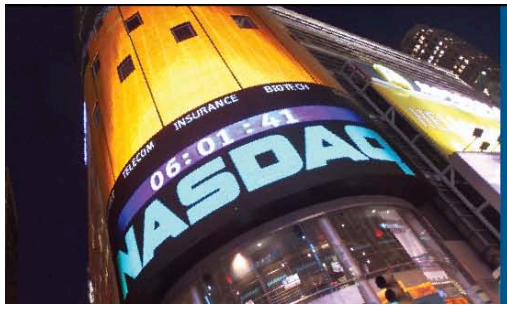
Gary: Correct, correct.

Joe: And you have to be able to simulate all that information real-time, right.

Q: Now I'm just going to follow-on on that question. I don't know how important it is to you guys, but the SEC to my knowledge, Gary, they didn't touch on anything in the example like they did with pro rata across exchanges, but what if someone is sponsoring me and I'm using direct FIX lines and I'm using a Royal Blue and I'm using workstation X and I'm making phone calls, all through your broker into the various markets? You have to consider me an aggregate across those different channels as well, right? Did they say you could pro rata that also or must you do that in aggregate?

Gary: Well, I don't know if I exactly understand the question. You have to either artificially or technologically treat them on an aggregated basis. But if you're technology doesn't support that, you could parcel out for each one of those silos a component and use the inherent risk controls within them. Again, you'd have to assume that all the other ones are maxed out. So you either need a holistic view that allows you to dynamically reallocate, or you need to arbitrarily allocate and each allocated element must assume all the others are maxed out. Does that respond?

Q: I think it does. And is there also a bit about the broker-dealer, and especially if you're using a third party, if the broker-dealer who is managing risk, you can keep standing instructions in case I hit one of my caps. You have to actually put in some level of human judgment,

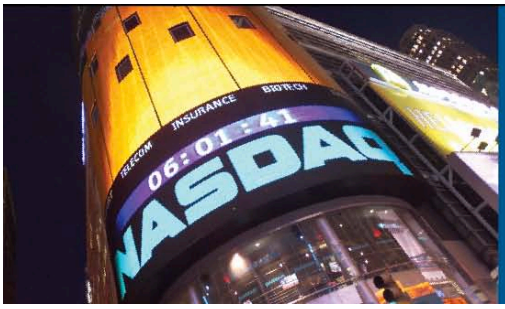


right?

Gary: So here's the issue, sole and exclusive control. They tried to clarify in the accompanying text. I don't know if they did more harm or good. So basically in a situation like that, if you're using – if you're a BD lending out your MPID, can't leave standing instructions with a third party what to do in given situations, because that's not sole and exclusive control. However, presumably, if you're controlling the system, you could set parameters that get triggered at different points. So I think what Joe said is really important here. And so you need to look at how your business is structured and figured out what tools you could use, either technical or non-technical. You could then draft this up in your policies and procedures. The first thing those reviewers are going to do is they're going to come in and they're going to ask to read your policies and procedures. So if you do a good job of articulating in your policies and procedures what you did and how you did it, I'd say you're halfway home. And this instance, you're either going to allocate among the different silos elements or you're going to show how you as the BD have sole and exclusive control over the reallocation.

Manisha: Other questions? Our next scenario is options consolidator allocating certain regulatory risk and in this scenario, the options consolidator is executing on behalf of introducing broker-dealers with regulatory – or with retail clients. They do allocate responsibility for certain regulatory requirements to the introducing broker-dealer. Joe, you want to take us through the scenario?

Joe: Well, again, in this particular case, it's a matter of understanding how much of the depth of knowledge that consolidator has over the end customer, as far as how much of an allocation from a regulatory standpoint can be passed back to the sponsored BD, in this particular case. So these consolidators will be taking order flow from a variety of different sources and executing in the various market structures. They would be responsible for all of the financial regulatory piece of it, as well as to a degree, depending on how much information they have on the end customer, the amount of financial – regulatory oversight would be their responsibility as well. And again, this is one of those relationships that is not one-size-fits-all. Every relationship between the sponsored broker and the executing



broker and where they're executing and how they're executing and the products they're executing is going to be relevant. And you need to look specifically to each part of that relationship to kind of understand the depth of its needs and its applicable nature. So if you're the executing broker, it's really a very big process in understanding every relationship that you're aggregating flow for, and tailor your rules and regs to those specific relationships. If you are a sponsored BD, you want to pass on as much in this particular case to that executing broker as possible.

Manisha: Questions about the options consolidator scenario? Any other comments from the panel?

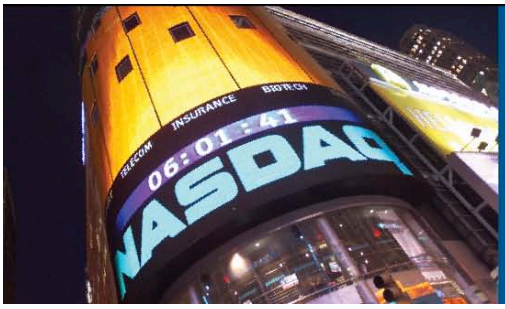
Paul: What did they put on the burdens of the actual venues themselves? I mean is there – when it comes to trade error situation, or I mean I'm asking the question, I'm on the panel, but that's one aspect of this whole thing that I thing that everybody understands that this was about minimizing or eliminating trading errors, right? So is there something on the venues themselves? Do they have a responsibility for this situation.

Joe: Not under this rule.

Paul: No, not on this rule.

Gary: Yeah, this rule is specifically targeted to broker-dealers who provide use of their MPID to access the market. Now, such a broker-dealer could make use of a destination offered risk management tool. But they're still responsible for it working. It's not a responsibility of the destination. And I say destination because it could be an exchange or an ATS, right? They can offer risk tools and as long as the BD does reasonable due diligence, that would be a reasonable allocation of that, but they would still be responsible – if it didn't work, I don't think the exchange would have liability under this rule.

Joe: Not under this rule, no. I thought this particular line within the rule itself and all those pages, this particular line is very relevant as to what the purpose of this rule was. "Financial and regulatory risk management controls should reduce the risks associated with market access and thereby enhance market integrity and increase investor



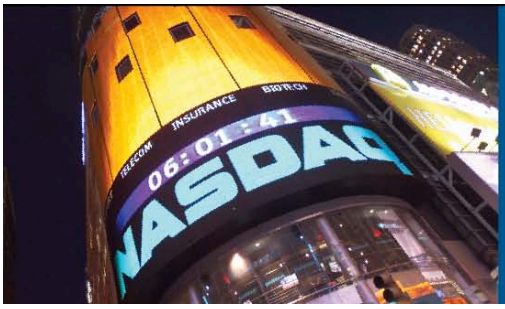
confidence." Again, looking back, timing of when this rule was put in place, the discussions were wrapped around and then the end resultant of May 6th taking place, the market concept release and all of the other elements that we experienced between 2008 and the end of 2010, I think that particular sentence quantifies exactly why we have this rule as it is today. In effect, they are trying to build their way to increase the value of the market's integrity, thus enhancing investor confidence in the market structure here in the US.

Manisha: And I think another interesting point to your question, what's the role of the markets in this? It's interesting, unlike Reg NMS, there are no SRO rules that are relevant to re-articulating what this rule is or giving more detail that while there are fat finger rules at NASDAQ and FINRA has them and New York has them, it's not like Reg NMS where you're getting an SRO specification defining what the automated trading center obligations are or you're getting specifications from the SIPs telling you to do anything. So the burden is really on broker-dealers to make the decisions here, without a lot of guidance from the SROs.

Joe: And you should also be noted that this is an SEC standalone rule. If, for example, there are other existing rules that are SRO rules, they're applicable as well. And should they stay in existence, you would have to be abiding by those as well.

Q: If you look at the open order handling and you consider the fact that they're willing to look at statistical interaction rate, however you define that so be it, but they'll look at the actual rate and then allow you to enter more orders into the market place than capital – that you actually have in hand with the clearinghouse. And I guess if you just hold that and think of the premise behind that, the statistical approach, and then look back at the other statement about having a siloed approach to distributing risk, is it necessarily clear that you can't take some statistical view at how much of the credit is being used across these things? I mean does it have to be so absolute that it's literally 50/50/50? Is that expressly stated, or is that sort of just the interpretation that you guys have?

Joe: No, no, Gary was pointing out that is one opportunity you have as a broker-dealer who is providing market access to use. It's not a requirement that you use a siloed approach, but it was an approach you could use. And there is a statement within the rule itself that does

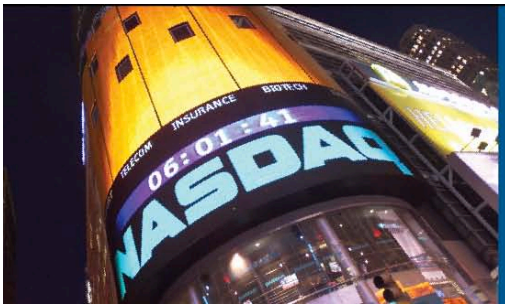


allow you to take into consideration some of the nuances to the flow that you're introducing to an exchange center, and should it have a very, very low execution rate, there would be an allowance allowable, as long as you can justify it in your rules and procedures for that type of business.

Q: So just for an example then, if you had three executing brokers and you siloed each of them and one of them was a backup broker that you seldom used, could you theoretically look at it from a statistical standpoint and say, yeah, I have $10 million of credit with him, but I only used one, and somehow have a fuzzier number that you can distribute across the other ones?

Gary: I guess one point is, anyone here can do anything they feel comfortable doing. I think the real question is, if you put that in place and notwithstanding the fuzzy nature you exceeded, you've got to ask yourself, do you think they'd come down on you? It is a principle-based rule, unfortunately, some people's interpretation of a principle-based rule is we're not going to tell you exactly what to do, but if we come in, we'll tell you exactly what you did wrong. Right? So you have to make yourself comfortable. And the reason the siloed approach is important is because it doesn't cost you anything. There's no technical solution you're buying for a siloed approach. You're basically making use of your existing means of access to the markets and just allocating what capital you have available. The real cost to you is this capital, because effectively you don't have as much effective capital to use. But I think – Joe mentioned it early, it's really important, it's whatever your CEO is comfortable signing off on. To my knowledge, the only other rule that requires CEO certification is Sarbanes-Oxley. Whatever your CEO is comfortable signing off on, and detail it in your policies and procedures, you can do it until someone tells you can't. I mean I hate to be so vague, but that's really the case.

Joe: The other thing you should be aware of is when we talked about this being a principle-based rule, a lot of discussion within our industry and within our regulators and within Congress, for that matter, was being talked about or bantered about about the combining of the CFTC and the SEC into one aggregated regulator or introducing a third-party aggregator, aggregated regulator over the top. Primarily the conflict between the CFTC



being a principle-based regulator and the SEC being a prescriptive type-based regulator, this was kind of a reach across by the SEC into the other's style of oversight. This was their first principle-based kind of rule set during that discussion period. Now since that period, there have been no further talks of consolidation. Obviously, we have more than enough on our plate and that's probably not something that's going to be resurrected anytime soon. But it may be some sort of indicative sign of the type of rulemaking we see going forward. And quite frankly, it is broad enough and it does cover enough ground to allow us to kind of build our businesses with an idea and a concept of what kind of rules that we'll have to be cognizant of as we do that. So we build them to match the regulations and then create the procedures to satisfy our regulators.

Manisha: Well, we've got two scenarios left and I'd like the audience to choose which one we do. So how many think BD offering options day trading? How many think institutional BD executing global basket? What do the rest of you want to talk about?

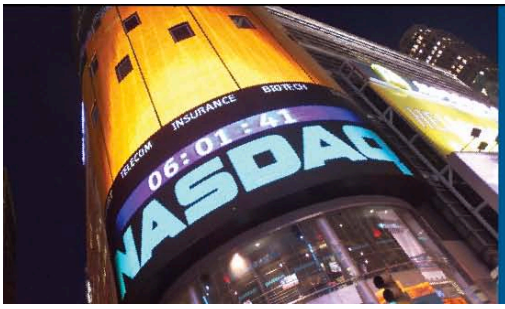
Manisha: Which has more hands, guys, what do you think?

Paul: I thought we had one for each. No, I think we had the day trading, because that's what Chicago is all about, so sorry guys, but I think the impression of people around the world is that Chicago leaves home, goes home without a position and on the weekend is on the golf course at 3:00 local time and definitely has no positions. So and I would think that that kind of relates to the crowd in Chicago, that's my impression of my good old friends in Chicago.

Manisha: Well, what do you think, Paul?

Paul: Well, I don't really have much of an opinion or background on this one, I have to admit, so I'm going to plead ignorance. I don't know if Joe you have any feeling on this one? I mean is there something particularly in the rules that everybody should know about the day trading side?

Joe: Again, you're talking about the financial controls, it's kind of irrelevant on a pre-trade basis,

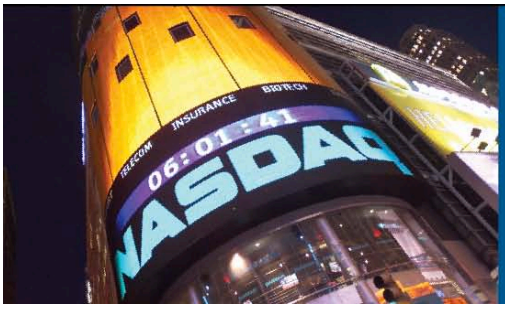


whether there's a net(?) position at the end of the night. But that would be my understanding of it as an executing broker on behalf of customers who are day trading zero positions. It's the amount of financial controls I put on in place in front of their trading, not necessarily at the end of the day with the net result is a zero credit balance. So you need to be aware of that as well, the volume of business, the credit risk value of the customer, and understanding the source of those customers. You have to actually – this again goes back to my original statement, that each one of these are just nuances, but in no particular case will there probably be two circumstances exactly the same.

Gary: One of the things that Ted mentioned in the intro is that we no longer have the luxury of treating risk management as post trade. And the reason that's huge is most systems that calculate credit, margin, they're end-of-day batch systems. And so at the beginning of the day, you will have accurate information because end of day and beginning of day actually butt up against each other at some point during the day. But what, as Joe said, this rule changes dramatically, is now you have to input that creditor margin information into a pre-trade risk system and be in a position where you know where that client is throughout the day. So now it's like real-time credit. And so you're talking about marrying a backend batch system with a front office real-time system. And if the SEC thinks that that's where most people are, they might be a little surprised.

Manisha: I know one topic everybody always wants to know about is delay. Gary, you mentioned something about talks of a delay. Well, what have you heard?

Gary: What FTEN does is we spend a lot of time going out and talking to different market participants, because really, this is your rule. You're the ones who get to interpret this and come up with something that you feel comfortable with for your own purposes. And what we've heard from a number of different players, both buy-side, sell-side, large firm, small firm, is they can understand the need and the appropriateness of this rule for naked sponsored access. Got it. And that perhaps if they go to the SEC and say, "Look, fine, that could be in force and effect by the July 14th deadline, but SEC realize the impact and difficulty of some of the things you're asking us to do." And so if, in fact, you as market participants believe that the effectiveness of this rule against all asset classes on a cross-



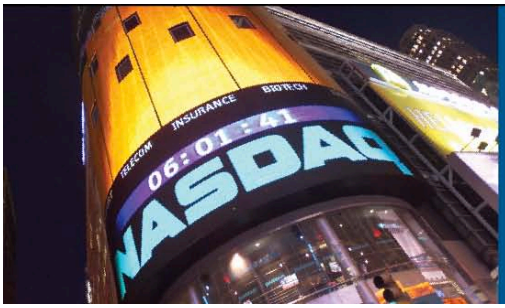
market basis by July 14th is unrealistic, that voice needs to be heard, whether it's to the FIF or other organizations. Perhaps there could be some flexibility. But there's been no mention of this flexibility from the SEC.

Joe: I mean just going back if I remember correctly, and these numbers are going to be rough, but if the – I believe the SEC stated in the original proposal that they thought broker-dealer to broker-dealer would probably be somewhere in the vicinity of a $50,000 implementation cost for a solution to this particular rule set, and then it would be an annual maintenance cost somewhere in the vicinity of $40,000 a year. And when ConvergEx in and of itself did an evaluation, we thought it would cost us close to a million dollars to put technologies in front of our customers and then it would probably cost us somewhere in the vicinity of three quarters of that on a yearly basis just to maintain those systems. So I don't – I think there was a very poor understanding from the SEC at at least the initial part of their proposal as to what exactly it would entail for this to take place. The types of systems and the changes that would have to go into place from a post-trade aggregation, credit risk check type facility to a pre-trade prohibitive type prophylactic system.

Manisha: Comments, questions?

Q: Yeah, at the panel in New York, it came up that if the aggregation model goes away, that suddenly my rebate isn't as high as it will be as high as it has been historically. And that might force me possibly to become a division of the only firms that make the tiers organically. And I was just wondering if you have any reaction to that or any thoughts on that, because that would reduce the number of market participants. I don't know if certain models would survive if they don't make the tiers, or at least get a portion of the tier that they otherwise wouldn't achieve.

Joe: I wouldn't say that that was the SEC's intent, but depending on how they enforce this rule, that may be the end result. That's something that we need to as an industry, be very cognizant of. The last thing we need is an oligarchy of providers. We need choice. We all need choice. We need an opportunity to build our businesses and be competitive. And so I think it's more on the backend of this rule than on the frontend. I do not believe the SEC



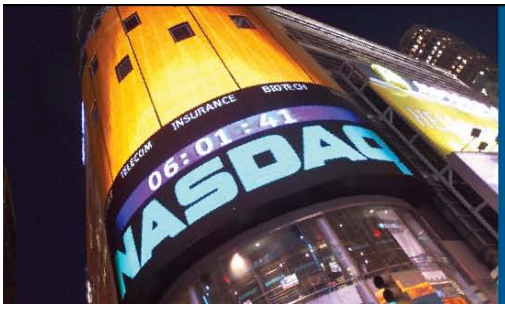
believes less is better in this particular case. I do believe that they believe in competition. I think our market structure has proven that by the fact that of the type of market structure that it kind of allowed to occur. Competition is good. But truly enforcement of this particular rule and others like it coming down the road could dramatically change that and we need to fight back. There's no reason – I do not want to become a piece of someone else's business or I do not want to be forced down a specific road just because they're the only provider that can actually do it with enough margin to make it sensible.

Gary: Just to clarify one thing and the gentleman who raised the issue made a good point. It doesn't do away with tier aggregation. It does away with no latency tier aggregation. Right? If the person providing the aggregation mechanism, the person who is lending out their MPID has pre-trade risk checks, they can do tier ag. So what's being limited is the no latency tier aggregation. So this does not do away with the concept of tier aggregation. It does away with the concept of tier aggregation absent the owner of the MPID providing pre-trade risk. If they're providing pre-trade risk, they can continue to provide it through aggregation. So that's an important distinction.

Paul: I do think though, there is a part of this story that is large dealers always betrayed the Wedbushes, Pensons of the world as doing something that it was kind of under the covers maybe. So if you were at a few events about this a couple years ago and if Goldman was on the panel, they were banging on the table that naked access is horrible and its evil I think – it's my own personal opinion – a little bit part of this story is that there was these large players versus these new players that were gaining market share and I do think it was part of it.

Manisha: Other questions?

Q: Well, regulatory risks that you might be able to allocate to a customer who is also registered BD, they talk about no, your customer and locate. Is there any further clarification on say order marking or trade-through protection, those could be also allocated to the BD customer?



Manisha: Like ISOs?

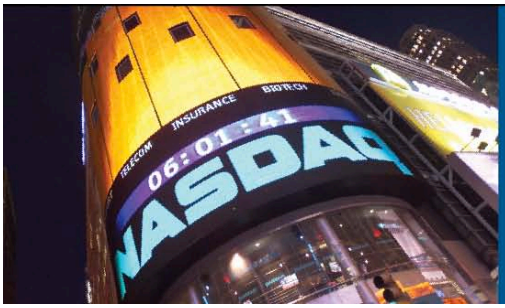
Q: Yes, like ISOs.

Joe: Yeah, that's allocatable. I believe that falls under the definite of allocation, yeah.

Q: It's just not specifically mentioned in the rules.

Joe: Yeah, no, no. It's a narrow band, but it's applicable to all the market access portions of the rule that the better BD, the better or more appropriate BD with better knowledge of the customer would be able to fulfill, would be the right and most logical choice, and should be satisfactory with the SEC overseer.

Donald: Joe, if I could jump on – that's actually a great point. And Gary made that point earlier, too, that this rule says, you know all those things that you have to do, you have to do them now on a pre-trade basis and policies and procedures, they actually can codify this into a very binary, a very yes or no as far as allowing order into the market center or not. And they don't do it for the exercise. They didn't trouble themselves to go in and say, this is the last 30 years, less 80 years rulemaking. This is everything that you have to comply with on a pre-trade basis. So again, to Gary's point, this rule just says, everything you have to do, now you have to do systematically. What do you have to do? Well, you already do that. So you're already in good shape. They were somewhat cavalier about that. Joe kind of made a point earlier, which I'd like to reiterate. This is why the importance of the industry group of working panels like this and working through FIF, working with NASDAQ or your other achievements or your own – whatever groups you are involved in, however you want to categorize yourself, come together as much as possible to define best practices and while the SEC goes to the trouble of saying, one size doesn't fit all and things have to be reasonable and all that, there are many different models. But as soon as those examiners start going out and start getting experience, the model x7, it looks like this and this is how three firms have handled it so far. When you're the fourth firm and you've taken a less conservative tack towards it, they're going to find difference and that – you're going to feel the weight of that difference in their pursuit of the rest of your activities and how they rate



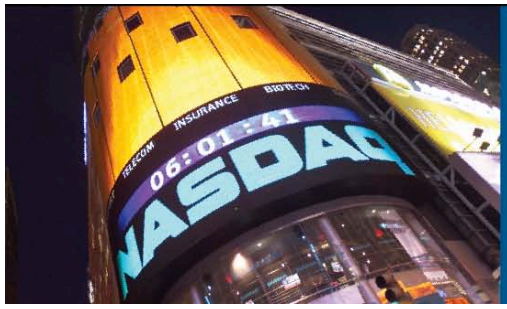
you. So, again, for your industry groups, or collectively come together and help establish, get out in front of the regulators, the examiners' definition of what's going to be expected with as many scenarios, as many business models that you could possibly find.

Gary: I think helping to establish an appropriate standard of care, which would be my way of saying what Donald just said, is a lot preferable to having the SEC define it for you. And the way you define a standard of care is one individual does not have the right to say what the standard of care is for the industry. The broader the base, hitting the same note, that tends to become the standard of care. So I think Donald, that's a very good suggestion. However you choose to do it, it's better for you to help be more in control of your destiny than to have the SEC make that up.

Joe: I mean I think the best benefit of this particular get together, at least now, is making you aware that you need to start reviewing and doing all this work. This is not going to be an overnight job. This is pretty heavy stuff depending on the models of business that you have and it could be extensive when you're doing a review. I do believe it allows you to grow your businesses better and it allows you to build and create a product that matches the rules that you're capable of providing yourself. To me, this is a better way for us as an industry to go forward. But this is definitely a test and I'm out here listening and hearing to see what kind of – what people think, this will be a very good experience for all of us a year from now to kind of analyze how this plays out or shakes out.

Manisha: I'm slightly biased as FIF and the Market Access working groups and we're taking these scenarios and that's what we're doing, we're surveying our members to understand, what are they putting in each of those cells that you see in your handout. So that's an interesting exercise and we'll see where that takes us.

Ted: Great, excellent. Well, that will conclude our panel discussion. Before we head on to our reception, I'd first like to thank Manisha, Joe, Paul, Gary. Thanks very much for your insight, your time, your perspective. We really appreciate your provoking a lot of these thoughts and perspectives to the audience and really, it's up to you to take what you heard, what you learned, a lot of your questions back to your respective offices and



generate more dialog, more questions. We are going to continue to do these educational forums and put out more FAQs over the course of time. I believe the next event that we have in the works is going to be a STANY breakfast coming up sometime soon and that's going to be back in New York.

Joe: It's March the 31st.

Ted: In March, yeah, so March is MAR-month. So without further ado, we are going to transition over to the reception. We have drinks and sushi. We greatly appreciate your time, thanks for joining us, and again, please don't forget about either taking a look at the working group that the FIF has or just reaching out to any of us for further questions, comments, or concerns. Thanks.

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