

# United States Senate

WASHINGTON, DC 20510

May 9, 2011

Mary Schapiro  
Chairman  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

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ES 138310  
MAY / 9 2011

Office of Legislative and Intergovernmental Affairs

Dear Chairman Shapiro,

Following the one-year anniversary of the "Flash Crash" of May 6, 2010, I am writing to reiterate my concern with our fragmented system of market surveillance, and to propose a way to fund more coordinated market surveillance more equitably by ensuring that those who place the largest burden on the system pay their fair share of the cost of establishing and maintaining the system. In short, I am writing in support of the Commission's efforts to establish a consolidated audit trail, and to respectfully ask you to consider funding the construction, operation and maintenance of the consolidated audit trail in part by assessing a fee on high-frequency traders who cancel a disproportionately high percentage of their orders.

In 2009, I sent you a letter respectfully urging the Commission to adopt a fully consolidated market surveillance system. In the aftermath of last year's Flash Crash, the need for more coordinated market surveillance has never been clearer. Despite the tremendous efforts of your staff, it still took several weeks to simply compile data from the various exchanges and alternative trading systems, and over five months to compile a full report. Accordingly, I was encouraged to see the Joint SEC-CFTC Advisory Committee also recommend "that the SEC proceed with a sense of urgency ... to implement a consolidated audit trail for the US equity markets".

However, I am concerned that developing a new audit trail from scratch will take several years. We need a consolidated audit trail now, and I believe we already have the building blocks to quickly build a consolidated audit trail. I respectfully suggest that the Commission consider building upon existing infrastructure, including FINRA's existing Order Audit Trail System (OATS), to create a consolidated audit trail.

Even this approach is likely to be costly to implement and maintain. Under the current system, the costs of market surveillance are borne disproportionately by exchanges, especially the listing exchanges. Other venues, such as ATSS and internal broker-dealer platforms, should bear their fair share of the costs of building, maintaining and monitoring any consolidated audit trail. I believe that to the extent these costs are borne by trading venues, they should be borne proportionally between all venues based on trading volumes.

Moreover, with two-thirds of trading volume now consisting of high-frequency trading, and many high-frequency traders flooding the market with thousands of orders they have no intention of actually executing, I think the Commission should consider paying for a consolidated audit trail and ongoing market surveillance by assessing fees on high-frequency traders who cancel a

disproportionately high percentage of their trades. This would help address what the Joint SEC-CFTC Advisory Committee referred to as "the disproportionate impact that [high-frequency trading] has on Exchange message traffic and market surveillance costs", and would help ensure that traders using strategies that impose extraordinary burdens on our market infrastructure "properly absorb the externalized costs of their activity". It would have the added benefit of deterring a practice that, at best, adds little value in the price discovery process and, at worst, is potentially manipulative or even fraudulent.

I applaud the hard work you and your staff have done on these and related issues and greatly appreciate your consideration of the proposals discussed above. I look forward to continuing to work with you and your staff to address these critical issues.

Sincerely,

A handwritten signature in black ink that reads "Charles Schumer". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Charles Schumer  
United States Senator