March 29, 2011

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

**Re: File No. 265-26;**
**Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010**

Dear Secretary Murphy:

STA[1] welcomes the opportunity to comment on the recommendations made by the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues (the "Committee"), in response to the Market Events of May 6, 2010. In its report, the Committee made 14 recommendations for the SEC and CFTC (the "Commissions") to consider in addressing the events of May 6, 2010, also known as the "flash crash". STA has long held the position that markets evolve and the events of May 6, 2010 create an opportunity to review the progress of that evolution. STA believes the Committee correctly considered an extensive list of market structure issues and did not focus solely on micro market structure issues in making its recommendations.

The STA urges the Commissions to employ the same level of diligence in obtaining empirical data necessary to establish the costs, benefits and effectiveness of any proposed rules. Considering the potential for disruption to the markets, any rule proposals should include comment periods adequate to allow all interested and affected parties to participate in their design.

The STA has stated in the past a few of our core beliefs when considering regulatory change to the market place:

**Incremental change is best**. The STA has consistently recommended that rules and regulations be changed incrementally to better identify and address any unintended consequences. While markets are dynamic, it is important to implement changes when the market participants are not reacting emotionally. Consequences are easier to identify

[1] STA is the leading trade organization for individual professionals in the securities industry that works to improve the ethics, business standards and working environment for its members. STA is comprised of 26 Affiliate organizations, nationally and internationally, with a total of 4,200 professional trade industry members who are engaged in the buying, selling and trading of securities. The Security Traders Association is committed to promoting the interests of its members throughout the global financial markets, providing representation of these interests in the legislative, regulatory and technological processes, while fostering goodwill and high standards of integrity in accord with the Association's founding principle, **Dictum Meum Pactum** – "*My word is my bond*".



777 Post Road • Darien, CT 06820 • tel (203) 202-7680 • fax (203) 202-7681 • STA@securitytraders.org • www.securitytraders.org

in stable markets. Changes are best made in stable markets and not during politically charged times or times of financial market unrest.[2]

**Regulations should not favor any one business model or platform**. Regulations should be "business model neutral" and work to insure only that investors are protected and not disadvantaged by the fiduciaries and other market participants tasked with serving their needs. The SEC should not pick "winners and losers."[3]

## The Committee Report

The Report of the Committee accurately identifies the micro market structure issues that impacted the events of May 6, 2010. The specific impact of each of these issues varies greatly, as will the level of disruption each of the 14 recommendations will have on our financial markets if they are adopted. We call upon the Commissions to prioritize their efforts on addressing the issues that are most related to the events of May 6, 2010 and least disruptive to the financial markets.

The STA is focused on two Committee recommendations we believe are most concerning to our organization: the "Trade-at" with Depth of Book Protection concept and "internalization or preferenced order routing". STA believes both of these recommendations would have a dramatic impact on the current market structure.

## Trade-at

As previously stated in our comment letter of April 30, 2010 in response to the SEC's Concept Release on Equity Market Structure:

> "Trade-at" - STA finds the issue of a "trade-at" rule a threat to the continued evolution of markets and the protection of investors, especially when combined with the other proposed principle of depth of book protection. [4]

Our members' views have not changed on a "Trade-at" rule. We would like to take this opportunity to expand on the thoughts of our community and to present some of the other interconnected issues that cause us to feel it necessary to express our opposition.

STA still believes markets today are functioning properly and all investors are protected by regulations that promote efficient market structure and competition. However, as we stated last year in our initial major findings section of our comment letter, regulators today do not have sufficient means to identify and take decisive action to correct negative unintended consequences:

---

[2] STA Comment Letter of April 30, 2010 in response to Securities Exchange Act Release No. 34-61358, File No. S7-02-10, Concept Release on Equity Market Structure, January 14, 2010, pp. 3 - 4.

[3] Id.

[4] Id.

> STA believes, that at least one major deficiency currently exists in SEC oversight of today's markets. Technology has progressed so far and so fast that the traditional market surveillance systems of the Self Regulatory Organizations have been unable to keep pace. They do not receive market wide data and support regulation on a system wide basis. The SEC needs to develop a National Market Surveillance System, linked to and integrated with the technological surveillance systems of the SROs but independent of them. Regulatory gaps exist today because there is no one regulator with the capacity to technologically observe, examine and evaluate intra- and inter-market trading. We are encouraged, however, by recent SEC actions to develop a consolidated audit trail system that would capture customer and order event information across markets.[5]

Lacking the proper regulatory infrastructure hinders a regulator's ability to monitor and police negative behavior which may come about as an unintended consequence from a major market structure changing proposal. The institutional community recognizes the importance of liquidity in the price discovery process of lit markets, but there are many objections to new regulations which force liquidity into the lit market. It is our belief that the catalysts to cause liquidity to move from unlit venues to lit venues should be rooted in choice, incentives and rewards, and not regulation. Dictating such behavior is an unnatural means to obtain a market structure which needs to be competitive and able to serve the needs of a broad base of investors.

Some specific concerns surrounding the negative unintended consequences which may result from a "Trade-at" rule, and the central limit order book it would create, are associated with information leakage, volatility and accountability. Front running and predatory pattern recognition behaviors, associated with information leakage on large orders in the market place, could be exacerbated in a "Trade-at" regime where orders are regulated to lit venues.

In the event that such unintended consequences come to exist, who will the investor hold accountable? Today, brokers bear the responsibility of working with their clients to provide adequate execution quality of an investor's order. In a "Trade-at" regime execution choices for an investor's orders would be limited. Therefore, the broker's level of accountability to the investor is reduced, which ultimately leaves the investor with less recourse. A "Trade-at" regime would diminish the broker's fiduciary responsibility to their client as protectors in the public market.

There is further concern that a "trade-at" rule would not be effective in a penny environment given the lack of room for price improvement. Reg NMS did not achieve an intended goal of bringing block liquidity to the inside market and we are concerned that a "Trade-at" rule would force market participants to show size without the reward of price discovery. Showing size without the advantage of price discovery puts those investors at a disadvantage in the market. Their orders may be looked at as a "stop" and other market participants may trade in front of the order knowing that size interest exists at a certain price point.

In the opinion of STA, the "Trade-at" with Depth of Book Protection recommendation, has the potential to be extremely disruptive to our financial markets and would represent a major overhaul of

---

[5] Id.

our markets with risks of negative unintended consequences which regulators are not equipped to remedy within the current regulatory infrastructure

Furthermore, our opposition to this rule is based on these additional beliefs;

1. <u>It discourages competition between exchanges, market places and dealers.</u>

   By dictating how orders are handled to this degree, the incentive to compete on price or size is diminished. A "Trade-at " rule, in effect would create one, centralized limit order book, CLOB. We view this as a step backwards in the evolution of our markets

2. <u>Creates a barrier of entry for new innovations.</u>

   We believe a "Trade-at" rule will result in the formation of central limit order book, CLOB. The existence of such a facility will create a barrier of entry for new innovated technologies.

3. <u>Information Leakage of Large Orders.</u>

   In order to comply with the "Trade-at" recommendation, investors- many of whom are large institutions who represent individual investors and who currently chose to handle their orders via a non-display venue - could have a larger portion of their orders routed to displayed venues for either display or execution. In doing so, the likelihood of information leakage on a large order existing in the marketplace could increase and cause harm to that investor by causing dramatic market moves and increased volatility

4. <u>High Costs to Implement.</u>
   We feel the level of messaging traffic will increase as orders which are currently being internalized will need to be routed into the market place. This will impose a significant cost to market participants who will have to recode algorithms and build more lines of connectivity and data storage facilities to facilitate the increase in messaging traffic. While the amount of these costs might be absorbed with manageable disruptions, that would only be the case if they were isolated expenses. When coupled with the costs of the other recommendations most likely to be put forth, in particular, Consolidated Audit Trail System and "Limit Up/Down" the overall costs to the industry becomes overly burdensome.

5. <u>Higher Costs to Execute.</u>
   Some orders which broker dealers may be internalizing today at no cost associated with access fees will be forced to route to destinations which may charge access fees. Ultimately, these costs could be passed back to investors.

6. <u>Limits a market participant's ability to handle their order flow.</u>

   STA believes that providing investors-both large institutions and retail- with a greater number of choices on how and where to execute their trades is a fundamental positive which exists in today's markets. A "Trade-at" rule and the subsequent CLOB it would create, would limit the choices investors and other market participants would have when executing their orders.

**Internalized or Preferenced Order Routing**

In its May 2008 White Paper, *STA Perspective on US Market Structure*, STA commented that internalization materialized as a natural reaction to the incremental costs associated with accessing liquidity on exchanges. Furthermore STA went on to state:

> "The increased volumes trading on alternative liquidity pools should be monitored to prevent any negative effects on robust price discovery."[6]

STA acknowledges that the amount of volume, as measured both overall and as a percentage of total volume, being internalized today verse May, 2008, when we issued this comment, has increased. However, we believe there exists a high level of interconnectedness between non-displayed venues and displayed venues which ensure overall market quality. STA has not seen any empirical data which suggests internalization adversely impacts prices discovery, quote quality or liquidity to the overall market. Transactions which are internalized today are still held to standards of best execution and limit order protection. Until such data can be produced which shows degradation in overall market quality attributed to internalization, STA is of the opinion that a market participant be able to internalize its order flow.

The STA appreciates the opportunity to comment on the recommendations made by the CFTC-SEC Joint Advisory Committee (the "Committee"), on Emerging Regulatory Issues in response to the Market Events of May 6, 2010, and looks forward to continued dialogue with the Commissions on these and other critical market structure issues.

Respectfully submitted,

Joseph Cangemi
Chairman

James Toes
President & CEO

---

[6] STA White Paper: Fulfilling the Promise of the National Market System--STA's Perspective on us Market Structure. April 30, 2008.

cc:

SEC Chairman Mary L. Schapiro

SEC Commissioner Kathleen L. Casey
SEC Commissioner Elisse B. Walter
SEC Commissioner Luis A. Aguilar
SEC Commissioner Troy A. Paredes
CFTC Chairman Gary Gensler

CFTC Commissioner Michael Dunn
CFTC Commissioner Jill E. Sommers
CFTC Commissioner Bart Chilton
CFTC Commissioner Scott D. O'Malia

CFTC-SEC Joint Advisory Committee member Brooksley Born
CFTC-SEC Joint Advisory Committee member John Brennan
CFTC-SEC Joint Advisory Committee member Robert Engle
CFTC-SEC Joint Advisory Committee member Richard Ketchum
CFTC-SEC Joint AdvisorY Committee member Maureen O'Hara
CFTC-SEC Joint Advisory Committee member Susan Phillips
CFTC-SEC Joint Advisory Committee member David Ruder
CFTC-SEC Joint Advisory Committee member Joseph Stiglitz

Robert W. Cook, Director, SEC Division of Trading and Markets
James Brigagliano, Deputy Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Markets
Daniel Gray, Market Structure Counsel, Division of Trading and Markets