

**SEC ROUNDTABLE ON SHORT SELL PRICE TEST
AND CIRCUIT BREAKER RESTRICTIONS**

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GOOD MORNING. NYSE EURONEXT APPRECIATES THE OPPORTUNITY TO APPEAR BEFORE THE COMMISSION TODAY. NYSE EURONEXT MATCHES MORE VOLUME THAN ANY OTHER EXCHANGE COMPLEX OR TRADING VENUE IN THE UNITED STATES, AND THUS OUR CONSTITUENTS INCLUDE RETAIL AND INSTITUTIONAL INVESTORS, ISSUERS AND TRADING FIRMS OF ALL VARIETIES. WE STRONGLY AGREE WITH THE COMMISSION'S DECISION TO RECONSIDER REINSTATEMENT OF PRICE TESTS. THE GLOBAL FINANCIAL CRISIS HAS RESULTED IN THE LOSS OF PUBLIC CONFIDENCE IN OUR FINANCIAL SYSTEM. THE GOVERNMENT HAS TAKEN A NUMBER OF DRAMATIC AND UNPRECEDENTED STEPS TO RESTORE THAT CONFIDENCE, AND WE BELIEVE THAT REINSTATEMENT OF A PRICE TEST OF SOME FORM CAN CONTRIBUTE TO THAT GOAL. WHILE IN A PERFECT WORLD, WE WOULD HAVE CLEAR PROOF OF THE EFFECT OF THESE TESTS, THE REAL WORLD DOESN'T ALWAYS LEND ITSELF TO STUDYING CONDITIONS THAT HAVE NOT OCCURRED BEFORE, OR WHICH OCCUR RARELY.

WITH THIS IN MIND, WE UNDERSTAND THAT THERE IS A BALANCE TO BE STRUCK BETWEEN MEASURES TAKEN TO DETER SO-CALLED BEAR RAIDS OR PANIC SELLING, AND THEIR CONSEQUENCES ON THE NORMAL FUNCTIONING OF THE MOST LIQUID, TRANSPARENT, AND EFFICIENT MARKET IN THE WORLD. INDEED, A SURVEY OF NYSE ISSUERS SHOWS THAT THEY TOO RECOGNIZE THE IMPORTANCE OF SHORT SELLERS IN PRICE DISCOVERY AND PROVIDING LIQUIDITY.

OUR GENERAL PRINCIPAL IS THAT THE STRONGER THE MEDICINE, THE MORE SELECTIVE WE SHOULD BE IN APPLYING IT TO THE PATIENT. THIS MEANS THAT THE HARSHER THE PRICE TEST, THE GREATER THE NEED FOR EXEMPTIONS AND CIRCUIT BREAKERS TO PREVENT DETERIORATION OF MARKET QUALITY, SUCH AS WHEN THE CONVERTIBLE BOND MARKET BROKE DOWN DURING LAST YEAR'S SHORT SELLING BAN.

THE SIMPLEST OF PRICE TESTS, THE OLD UPTICK TEST, WOULD BE INEFFECTIVE IN TODAY'S MARKET DUE TO IMPROPER PRICE SEQUENCING CAUSED BY PERMITTED REPORTING DELAYS AND THE POTENTIAL FOR MANIPULATION. THE MODIFIED UPTICK RULE, AS DEFINED IN THE SEC PROPOSAL, IS MUCH MORE IMPLEMENTABLE, ASIDE FROM SEQUENCING ISSUES, AS BIDS ARE POSTED IN REAL-TIME, AND FIRMS ALREADY USE THEM FOR COMPLIANCE WITH THE REG NMS TRADE-THROUGH RULE. AS A REMINDER, THIS SO-CALLED "BID TEST" WAS IN EFFECT IN THE NASDAQ MARKETPLACE IN A MARKET STRUCTURE THAT WAS SUBSTANTIALLY SIMILAR TO TODAY'S – POST-DECIMALIZATION, ELECTRONICALLY INTERCONNECTED MARKETS, HIGH PARTICIPATION BY HIGH FREQUENCY TRADING - WITHOUT DETRIMENTAL EFFECT. WE BELIEVE THAT THIS CHANGE, IMPLEMENTED WITHOUT CIRCUIT BREAKERS, COULD BE EFFECTIVE IN DAMPENING RAPID OR ABUSIVE SHORT SELLING WITHOUT SIGNIFICANT HARM TO UNDERLYING MARKET QUALITY.

OUR SECOND PREFERRED CHOICE WOULD BE THE PASSIVE LIQUIDITY TEST AS DESCRIBED IN A LETTER SENT JOINTLY BY THREE EXCHANGES TO THE SEC SHORTLY BEFORE THE RELEASE OF THE PROPOSED RULE CHANGES. THE PASSIVE LIQUIDITY TEST IS A MORE STRINGENT REQUIREMENT THAN EITHER OF THE PROPOSED SEC TESTS, REQUIRING THAT SHORT SALES BE DONE IN A WAY THAT ADDS LIQUIDITY TO THE MARKET, AND THUS SHOULD BE IMPLEMENTED ONLY IN CONJUNCTION WITH A CIRCUIT BREAKER. THE PASSIVE LIQUIDITY TEST ALSO HAS THE

ADVANTAGE OF NOT REQUIRING THE SEQUENCING OF TICKS OR TRADES, THUS GREATLY EASING IMPLEMENTATION.

DUE TO THE COMPLEXITY OF EITHER OF THESE TESTS, WE RECOMMEND THAT THEY BE IMPLEMENTED IN THE FORM OF “POLICIES AND PROCEDURES,” CONSISTENT WITH REG NMS TRADE-THROUGH COMPLIANCE.

CIRCUIT BREAKERS IN GENERAL ARE CONFUSING, CLUMSY LOGISTICALLY, AND WILL INCREASE THE WORK REQUIRED FOR IMPLEMENTATION. THEY INTRODUCE SUCH ARBITRARY CONSIDERATIONS AS:

- AT WHAT LEVEL DO WE SET THE CIRCUIT BREAKERS
- WHETHER DIFFERENT PRICED STOCKS REQUIRE DIFFERENT CIRCUIT BREAKER LEVELS
- WHAT TO DO IF A STOCK RETRACES ITS LOSSES INTRADAY
- HOW TO HANDLE NEWS SITUATIONS
- HOW LONG A SHOULD A CIRCUIT BREAKER LAST

WE DISCOUNT THE MAGNET EFFECT PREVIOUSLY DISCUSSED AS NOT BEING CRITICAL TO IMPLEMENTATION.

FINALLY, WE BELIEVE THAT IN NO CIRCUMSTANCES SHOULD THERE BE AN OUTRIGHT BAN ON SHORT-SELLING, AS THE DAMAGE DONE TO MARKET QUALITY, AS SEEN IN INCREASED SPREADS AND VOLATILITY, IS TOO SUBSTANTIAL.

REGARDLESS OF WHICH APPROACH THE COMMISSION ADOPTS, WE STRONGLY SUGGEST THAT THE EXEMPTIONS PREVIOUSLY IN EFFECT UNDER RULE 10A-1 BE INCLUDED IN THEIR ENTIRETY. IT IS ESSENTIAL THAT ANY RULE INCLUDE A MARKET MAKER EXEMPTION, AS THESE

PARTICIPANTS NEED TO MAKE TWO-SIDED MARKETS TO ENHANCE MARKET QUALITY. WE SUGGEST THAT THE SEC USE THIS OPPORTUNITY TO BETTER DEFINE THE TERM “MARKET MAKER” UNDER THE RULE TO ACCOUNT FOR THE DIFFERENT TYPES OF MARKET PARTICIPANTS ACTIVE TODAY. WE ALSO BELIEVE IT IS IMPORTANT THAT THE RULE INCLUDE EXEMPTIONS FOR ETFS AND ETNS, WHICH HAVE BEEN PROVIDED NO-ACTION EXEMPTIONS BY THE COMMISSION IN THE PAST, AND LIKEWISE, OTHER EXEMPTIONS, SUCH AS OPTIONS AND CONVERTIBLE ARBITRAGE, DEPENDING ON WHICH RULE IS ULTIMATELY ADOPTED.

THANK YOU FOR THE OPPORTUNITY TO EXPRESS NYSE EURONEXT’S VIEWS. WE LOOK FORWARD TO WORKING WITH THE COMMISSION AND THE INDUSTRY TO FIND A BALANCED SOLUTION TO THIS CRITICAL AND HIGHLY EMOTIONAL ISSUE.