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December 22, 2016

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility (File No. 4-631)*

Dear Mr. Fields:

The Investment Company Institute (ICI)<sup>1</sup> urges the Securities and Exchange Commission (SEC or Commission) to approve the twelfth amendment to the national market system (NMS) plan to address extraordinary market volatility (Limit Up-Limit Down Plan).<sup>2</sup> The proposed amendment would address certain market structure failings that contributed to the volatile trading on August 24, 2015. ICI previously has urged the SEC to lead efforts to clarify the operation of the Limit Up-Limit Down Plan and direct the exchanges to harmonize their processes for reopening securities following a limit up-limit down trading pause.<sup>3</sup>

We commend the exchanges and the Commission for taking steps to address some of our concerns. Proposed Amendment 12 would consolidate the liquidity for reopening auctions at the primary listing exchanges and ensure that trading does not resume until limit up-limit down price bands are in place. In separate but related actions three primary listing exchanges have filed rule changes

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<sup>1</sup> ICI is a leading global association of regulated funds, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$18.2 trillion in the United States, serving more than 95 million US shareholders, and US\$1.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

<sup>2</sup> Securities Exchange Act Release No. 79410, 81 FR 87114 (December 2, 2016), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-28937.pdf> (Proposed Amendment 12).

<sup>3</sup> See Letter to Mary Jo White, Chair, SEC, from Paul Schott Stevens, President and CEO, ICI, dated November 30, 2015, *available at* <https://www.ici.org/pdf/29517.pdf>. ICI also recommended that the exchanges reconsider the operation of their clearly erroneous trade rules in conjunction with the limit up-limit down price bands and suggested that the SEC work with other regulators to ensure that market halts are implemented consistently across markets.

that would harmonize the procedures they use to resume trading following a limit up-limit down pause.<sup>4</sup> These proposed market structure refinements should improve the transparency of the reopening process, allow reopening auctions to establish more accurate prices, and make it less likely that trading in a security will be halted again shortly after trading resumes. Implementing these proposals also should increase market confidence by reducing the likelihood of the Limit Up-Limit Down Plan creating confusion during volatile markets, when clarity and certainty are most important. We urge the Commission to adopt Proposed Amendment 12 and the corresponding exchange rule changes.

We emphasize, however, that further work is needed in this area. Proposed Amendment 12 does not address two key shortcomings of the Limit Up-Limit Down Plan that we noted in our letter last year. First, the amendment does not address the discordance between the rules governing clearly erroneous executions and the limit up-limit down price bands, which contributes unnecessarily to uncertainty in the equity markets in volatile times. The SEC Equity Market Structure Advisory Committee has proposed a recommendation for addressing this issue and for reforming other aspects of the Limit Up-Limit Down Plan that we believe deserves serious consideration from the exchanges and the Commission. Second, Proposed Amendment 12 would not fix the deeply flawed governance model of the Limit Up-Limit Down Plan that vests all decision-making authority in the self-regulatory organizations. The work of the operating committee of the Limit Up-Limit Down Plan—and the work of the operating committees of other NMS plans—would be far better informed if it included the perspectives of a broader group of market participants, including registered funds and their advisers. We urge the Commission to address these concerns in the near future to improve the functioning of the equity markets to benefit and protect funds, their shareholders and other investors.

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<sup>4</sup> See Securities Exchange Act Release Nos. 79162, 81 FR 75876 (November 1, 2016) *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-11-01/pdf/2016-26300.pdf>; 79158, 81 FR 75879 (November 1, 2016) *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-11-01/pdf/2016-26298.pdf>; and 79107, 81 FR 73159 (October 24, 2016) *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-10-24/pdf/2016-25572.pdf>.

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If you have any questions on our comment letter, please feel free to contact me at (202) 326-5815, or Jennifer Choi, Associate General Counsel, at (202) 326-5876.

Sincerely,

/s/ David W. Blass

David W. Blass  
General Counsel

cc: The Honorable Mary Jo White  
The Honorable Kara M. Stein  
The Honorable Michael S. Piwowar

Stephen Luparello, Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets