Janet McGinness
Senior Vice President – Legal & Corporate Secretary
Legal & Government Affairs

20 Broad Street
New York, New York 10005
t 212.656.2039 | f 212.656.8101
jmcginness@nyx.com

Via E-Mail and Federal Express

November 2, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Response to Comments on Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the "Plan")

Dear Ms. Murphy:

NYSE Euronext, on behalf of the three U.S. exchanges that it operates, New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc. (collectively, the "NYSE Exchanges"), as well as the other parties to the Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, LLC, The NASDAQ Stock Market LLC, and National Stock Exchange, Inc. (collectively with the NYSE Exchanges, the "Participants"), submits this letter in response to comment letters received by the Securities and Exchange Commission (the "SEC" or "Commission") in connection with the above-referenced Plan.

As proposed, the Plan would create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act").[1] The Participants appreciate the thoughtful comments that were submitted in connection with the Plan. This Response addresses the comments raised generally and not any specific comment letter.

---

1 Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631).

I. Background on the Plan

On April 5, 2011, NYSE Euronext, on behalf of the Participants, filed the Plan with the Commission. The proposed Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[2]

As set forth in Section V of the proposed Plan, the Price Bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock. The Price Bands would be based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The Price Bands for an NMS Stock would be calculated by applying the Percentage Parameter[3] for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the Price Bands would be calculated by applying double the Percentage Parameters.

When one side of the market for an individual security is outside the applicable Price Band, the Processor would be required to disseminate such National Best Bid ("NBB") or National Best Offer ("NBO") with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable Price Band, the market for an individual security would enter a Limit State, and the Processor would be required to disseminate such NBO or NBB with an appropriate flag identifying it as a Limit State Quotation. All trading must immediately enter a Limit State if the NBO equals the Lower Limit Band and does not cross the NBB, or the NBB equals the Upper Limit Band and does not cross the NBO. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations were executed or canceled. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause.

The Processor would calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new Price Bands would be disseminated, and the

---

2 Capitalized terms not defined in this letter are defined in the proposed Plan.

3 The Percentage Parameters for Tier 1 NMS Stocks (i.e., stocks in the S&P 500 Index or Russell 1000 Index and certain exchange-traded products ("ETPs")) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (i.e., all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product.

current Reference Price would remain the effective Reference Price. When the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processor would disseminate new Price Bands based on the new Reference Price; each new Reference Price would remain in effect for at least 30 seconds.

These limit up-limit down requirements would be coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the proposed Plan, all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and Trading Pause requirements specified in the proposed Plan.

Under the proposed Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in NBB or NBO calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the Price Bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

The Plan would be implemented as a one-year pilot program in two Phases. Phase I of the Plan would be implemented immediately following the initial date of Plan operations; Phase II of the Plan would commence six months after the initial date of the Plan or such earlier date as may be announced by the Processor with at least 30 days' notice. During Phase I, the Plan would apply only to Tier 1 NMS Stocks, as defined in Appendix A of the Plan, the first Price Bands would be calculated and disseminated 15 minutes after the start of Regular Trading Hours, no Price Bands would be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours, and trading would not enter a Limit State less than 25 minutes before the end of Regular Trading Hours. In Phase II, the Plan would fully apply to all NMS Stocks beginning at 9:30 a.m. and ending at 4:00 p.m. each trading day.

The Participants believe that, if implemented, the Plan would reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks, thereby protecting investors and promoting a fair and orderly market. In particular, the Participants are proposing to adopt the Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.

II. Comments and Participants' Response

There were 18 comment letters submitted with respect to the Plan. Most commenters generally supported the implementation of a limit up-limit down mechanism and viewed it as preferable to the current single-stock circuit breakers, but a number of commenters suggested adjusting certain levels set in the Plan, as described in more detail below. However, other commenters agreed with the levels set by the Plan and/or recommended that consideration be given to adjusting them only after experience was gained during the initial pilot period of the Plan. The following addresses the comments raised, in no particular order.

A. Price Bands around Open and Close

Numerous comments related to the implementation of the Price Bands around the open and/or close of the trading day. Some commenters suggested that Price Bands should not apply until after the primary market opens and/or that no Price Bands should apply for some period of time prior to the close, not just in Phase 1, but for the proposed Plan generally. Other commenters stated that doubling the Percentage Parameters around the open and close would lead to confusion or irregularities even in orderly markets, and that it would be preferable instead to use a Percentage Parameter of 10 percent throughout the day. One commenter suggested extending the Price Bands into the pre-open and post-close periods using a simpler wide band with a stable price based on the previous close. The Participants believe that the proposed doubling of the Percentage Parameters is appropriate in light of the volatility profiles around the opening and closing periods, and that no adjustment to the timing or levels of the Price Bands should be made to the Plan until experience is gained from both Phases I and II.

B. Dynamic vs. Static Price Bands

Some commenters advocated basing the Price Bands on a static percentage change from the prior day's close, like the futures market, and using 10 percent rather than five percent as the Percentage Parameter. The Participants note that this alternative was considered when the Plan was being drafted, but the Participants determined that something more dynamic would be preferable, and that in such case, the five percent level is more appropriate, particularly for highly liquid stocks.

C. Disseminating Quotes Outside the Price Bands

Several commenters asserted that not displaying all quotes outside the Price Bands would impede market participants' ability to assess trading interest in the market or contribute to volatility. The Participants note that under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. When one side of the market for an individual security is outside the applicable Price Band, the Processor would be required to disseminate such NBB or NBO with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable Price Band, the market for an individual security would enter a Limit State, and the Processor would be required to disseminate such NBO or NBB with an appropriate flag identifying it as a Limit State Quotation. After considering whether more quotes could be displayed as unexecutable, the Plan Participants determined that any potential benefits to such practice would be outweighed by the risk of investor confusion and don't believe that the Plan should be amended to permit all quotes outside the Price Bands to be displayed. The Participants will continue to review this issue and may revisit it after gaining experience during the pilot.

D. Reference Price

Some comments related to the recalculation and dissemination of the Reference Price. One commenter recommended calculating a new Reference Price at regular 30-second intervals, regardless of whether the Reference Price changed by one percent. Another commenter noted that if the market price for an NMS Stock moved by less than one percent, the Price Bands would not change and, and as a result, the limit up and limit down prices would be closer to four percent than five percent over the prevailing market price; however, the commenter noted that such result may be unavoidable unless the Reference Price were updated any time there was a price move, an approach the commenter did not advocate. The Participants believe that the proposed one percent requirement would help to reduce quote traffic but still provide for appropriate adjustment of Reference Prices in a rapidly moving market.[4]

Some commenters advocated using a volume-weighted average price instead of an arithmetic average for calculating the Reference Price. The Participants believe that using the arithmetic average would reduce the impact of any erroneous trades that may be included in the calculation of the Reference Price.

E. Requiring Quotes at Price Band to Trigger Limit State

Several commenters raised a question as to whether quotes through (not just at) the Price Bands would trigger a Limit State. The Participants believe that there will be adequate quotes at the Price Bands to trigger the Limit State but intend to reconsider this comment after gaining experience during the pilot. In particular, one commenter noted that there may be instances where a stock is effectively not trading, e.g., because the NBB is below the Lower Price Band but the NBO is still within the Price Bands and thus the Limit State would not be triggered. In such situations, the Participants expect that sellers will be willing to offer the stock at the Lower Price Band, the NBB will move above the Lower Price Band, or the reference price will be recalculated and adjust the Price Bands. During the pilot, the Participants will monitor these situations and consider modifications to the Plan structure if needed.

---

[4] Although the Participants are not proposing to amend the Plan with respect to the calculation of Reference Prices, the Processor will republish the existing Price Bands every 15 seconds.

F. Length of Limit State

Comments varied on the 15-second Limit State. While some commenters suggested shortening it to five seconds, others advocated lengthening it to at least 30 seconds. The Participants believe that the 15-second Limit State should be long enough to reasonably attract additional available liquidity without recourse to a Trading Pause, while short enough to reasonably limit any market uncertainty that might accompany a Limit State. During the pilot period, the Participants will continue to review the length of the Limit State and consider whether, based on that experience, it should be lengthened or shortened.

G. Requirements for Exiting Limit State

One commenter expressed concern that the Plan could result in the exit of a Limit State under circumstances in which there is not a new limit bid or offer, e.g., if all of the quotations comprising a Limit State Quotation were cancelled without a new bid or offer that is executable (i.e., a bid or offer within the Price Band) being established. This commenter suggested instead that the Plan require a new bid and a new offer that are executable before the expiration of a Limit State period, and in the absence of a bid and offer, a Trading Pause may be a more appropriate manner in which to reestablish the market for an NMS Stock. Another commenter expressed concern that the exit from a Limit State would be arbitrary and could be easily manipulated. According to this commenter, it would not be clear to market participants from moment to moment whether a trading pause will be declared or whether the Price Bands will suddenly be adjusted, and exiting a Limit State would depend upon the timing of an order that could clear out the Limit State quotation and when a new limit order arrives at the Limit State quotation. This commenter suggested that a simpler and more useful framework would be (1) to enter a Limit State, where there will be no executable buys or sells, or both; that is, either the best bid is outside the Price Bands, the best ask is outside the Price Bands, or both; and (2) declare a Trading Pause if either the bid or the ask, or both, remain outside a Price Band for five seconds.

As noted above, the Participants have determined not to display quotes outside the Price Bands and therefore believe that it will be necessary for all Limit State quotes to cancel or execute in order to maintain fair and orderly markets and avoid investor confusion. The Participants further note that adding a requirement that a new executable bid or offer be entered before exiting a Limit State raises the question of who would be obligated to enter such a bid or offer. Moreover, depending on the price movements during the five minutes prior to entering the Limit State, the Reference Price may have moved, thus moving the Price Bands. In such case, executable bids and offers may become available simply by virtue of the recalculated Price Bands.

H. Trading Pauses

One commenter suggested shortening the five-minute Trading Pauses while another stated that it may be appropriate to extend the Trading Pause in a multi-stock event and provide discretion to exchange personnel to handle extreme events. The Participants believe that a five-minute period has worked appropriately in the current trading pause pilot, which has been in place for over one year, and that the current rules of the Participants provide sufficient discretion to their personnel to handle extreme events.

Some commenters suggested that there should be no Trading Pauses in the final five to 10 minutes before the close, or that there be no Trading Pauses from 3:35 to 4:00 p.m. in Phase 2 and thereafter. The Participants believe that doubling the Percentage Parameter prior to the close will appropriately account for the additional volatility that may be experienced around the close and reduce the likelihood that a Trading Pause will be declared and that the Plan's provisions for Trading Pauses in the five minutes preceding the close are necessary to help ensure fair and orderly closings across markets.

I. Clearly Erroneous Executions

Some commenters requested that the Participants amend their rules to provide that an execution within a Price Band could not be deemed a clearly erroneous execution. While the Participants believe that it may be useful to do so and that a key benefit of the limit up-limit down requirements should be the prevention of clearly erroneous executions, the clearly erroneous rules are separate from the Plan and as such the Participants will consider such a change on a separate track.

J. Non-Voting Advisors to Operating Committee

Several commenters requested that non-voting advisors be added to the Plan's Operating Committee. The Participants believe that is unnecessary. Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan would have to be effected by means of a written amendment to the Plan that (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and (3) is approved by the SEC pursuant to, or otherwise becomes effective under, Rule 608 of Regulation NMS under the Exchange Act. Thus, any person affected by changes to the Plan would have notice and an opportunity to comment as part of the SEC approval process in accordance with Rule 608.

K. Coordination with Options and Futures Markets

Some commenters suggested that there should be more coordination with futures and options markets. Any coordination with the futures market also may require consultation with the Commodity Futures Trading Commission, which oversees such markets. The Participants believe that the Plan will generally benefit the markets for NMS Stocks and protect investors and should not be delayed while further consideration is given to coordination with options and futures markets.

Thus, with respect to the foregoing comments, the Participants believe that the Plan strikes appropriate balances in the areas noted and should not be changed at this time in response to these comments. Because the Plan would be adopted as a pilot, the Participants will have an opportunity to consider making the changes suggested above after gaining experience with the Plan.

L. Processor Capability

Some commenters questioned whether the Processor is capable of undertaking the obligations, e.g., calculating and disseminating the Price Bands, imposed on them by the proposed Plan. The Participants believe that the Processor is well-suited to carrying out its responsibilities under the Plan and will monitor the Processor's performance during the pilot.

III. Proposed Changes to the Plan

The Participants have considered certain other comments submitted to the Commission and believe that certain changes should be incorporated into the Plan before its implementation, as described in more detail below.

A. Percentage Parameter

While several commenters agreed that the five percent Percentage Parameter for Tier 1 NMS Stocks was appropriate, other commenters questioned whether it was too narrow and should be 10 percent instead. After further consideration, the Participants believe that the Percentage Parameters to the Plan should be amended. Specifically, the Participants propose to amend the Percentage Parameter for Tier 1 or 2 NMS Stocks with a Reference Price equal to $1.00 and up to and including $3.00 to be 20 percent; the Percentage Parameter for Tier 1 and 2 NMS Stocks priced above $3.00 would be five and 10 percent, respectively.

The Participants have undertaken a review of trading characteristics of stocks priced from $1.00 to $3.00 and believe either the five or 10 percent Percentage Parameters (as applicable), if applied to those stocks, would result in a greater volume of Limit State triggers without a corresponding benefit. Accordingly, the Participants believe that a more appropriate Percentage Parameter would be 20 percent for stocks with a price equal to $1.00 and up to and including $3.00, which would help to keep the number of Limit States triggered more consistent across securities. With these adjustments, the Participants believe that the Percentage Parameters will be sufficiently narrow to guard against excessive market volatility while sufficiently broad to allow trading to occur without triggering Limit States too frequently.

B. Certain Trades Permitted to Execute Outside Price Bands and Excluded from Reference Price

Several commenters suggested that certain non-regular way trades, such as volume-weighted average price trades and other trades that qualify for an exemption under Rule 611 of Regulation NMS, the SEC's trade-through rule, should be permitted to execute outside the Price Bands and be excluded from the Eligible Reported Transactions used to calculate Reference Prices. The Participants generally agree with these comments and will amend the proposed Plan to permit any transaction that both does not update the last sale price and is excepted or exempt from Rule 611 under Regulation NMS to execute outside the Price Bands. We note that transactions that do not update the last sale price of an NMS Stock already are excluded from the definition of Eligible Reported Transaction and therefore are not included in the calculation of a Reference Price.

C. Securities Excluded From Plan

Some commenters suggested that there should be a third Tier or wider Price Bands for thinly traded stocks. Upon further consideration of these comments, the Participants determined that all rights and warrants should be excluded altogether from the Plan and will amend the proposed Plan accordingly. The Participants also are considering various ways to address stocks priced below $0.25, including imposing a wider Price Band on those stocks or exempting them from the Plan entirely, and may propose an amendment to the Plan in the future.

D. Intraday Price Changes

One commenter requested clarity on the impact of intra-day price changes, e.g., when a stock starts the trading day with a Reference Price of $1.00 or more but falls below such level during the trading day. The Participants have determined that the prior day's close will be used to determine whether the Reference Price for a stock is below $1.00, from $1.00 to $3.00, or over $3.00 and will amend the proposed Plan to clarify this point.

E. ETPs

Some commenters raised concerns about the treatment of ETPs. One commenter recommended that all ETPs be included in Tier 1 NMS Stocks while another commenter suggested that all ETPs be included in Phase 1 of the pilot. The Participants believe that, in general, the proposed Phases of the Plan appropriately focus on trading characteristics and volatility rather than instrument type. Including only certain ETPs in Tier 1 NMS Stocks and including ETPs in the Plan in phases would treat ETPs in the same manner as they were treated in the trading pause pilot.[5]

Nonetheless, the Participants recognize that the list of 343 ETPs that are in Tier 1 has not been updated since September 2010. That list included any ETP with a minimum average daily volume of $2,000,000, as well as any ETP that did not meet the $2,000,000 average daily volume threshold but tracked similar stocks and indices as ETPs meeting this criterion and

---

5 *See* Securities Exchange Act Release Nos. 62884 (Sept. 10, 2010), 75 FR 56618 (Sept. 16, 2010) (adding certain ETPs to trading pause pilot), and 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (expanding the trading pause pilot to include all remaining NMS stocks).

that were included in the trading pause pilot.[6] The Participants believe that they should have the flexibility to update the ETP list for Tier 1 NMS Stocks to include any ETP that meets these criteria and propose to amend the Plan accordingly.

F. Regular Trading Hours

While there were no comments submitted regarding the hours when the Plan is in effect, the Participants propose to amend the Plan to clarify that it is in effect during Regular Trading Hours, which are 9:30 a.m. to 4:00 p.m. ET, subject to whether the primary listing market has an early scheduled close, i.e., the Friday after Thanksgiving or, depending on the calendar day, Christmas Eve or July 3. In addition, if the markets close early for any other reason, the Participants propose that the Plan be in effect up to the time that the Processor disseminates a closing trade for the Primary Listing Exchange.

IV. Conclusion

As noted above, the Participants have proposed implementing the Plan on a pilot basis. The purpose of starting as a pilot is to enable the markets and the SEC to review the operation and impact of the Plan during its initial implementation and enhance the Plan as may be warranted. As part of that review, the Participants will continue to monitor the issues noted above. The Participants believe, however, that the parameters set in the Plan are generally appropriate and should not be modified, except as noted in the preceding section, until experience is gained under the pilot.

Sincerely yours,

Janet McGinness

cc: The Hon. Mary Schapiro, Chairman **(via Fed Ex)**
The Hon. Luis Aguilar, Commissioner **(via Fed Ex)**
The Hon. Troy Paredes, Commissioner **(via Fed Ex)**
The Hon. Elisse Walter, Commissioner **(via Fed Ex)**
Mr. Robert W. Cook, Director of Trading and Markets **(via e-mail)**
Mr. David S. Shillman, Associate Director of Trading and Markets **(via e-mail)**

---

6 ETPs with average daily volumes of less than $2,000,000 and for which there were no high-volume counterparts as well as leveraged ETPs were excluded from the list.