INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

June 22, 2011

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

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

Dear Ms. Murphy:

The Investment Company Institute[1] is writing to provide comments on the proposed plan filed by the national securities exchanges and FINRA to address extraordinary market volatility through the establishment of market-wide "limit up-limit down" requirements.[2]

The Institute has strongly supported efforts to address market volatility in response to the market events of May 6, 2010, including the establishment of the current single-stock circuit breaker pilot. As we explained in our comment letter on the circuit breaker proposal, the events of May 6 highlighted the need to implement a trading pause for individual securities in times of market stress to mitigate instances of sudden market volatility.[3] While the single-stock circuit breaker pilot was a significant step in addressing concerns about volatility, the proposed limit up-limit down mechanism, which would replace the single-stock circuit breaker pilot, would provide a more flexible approach to addressing extreme price movements in stocks.[4]

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.41 trillion and serve over 90 million shareholders.

[2] Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) ("Release").

[3] *See* Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 3, 2010.

[4] The circuit breaker pilot is currently set to expire the earlier of August 11, 2011 or the date on which the limit up-limit down mechanism, if adopted, applies.

The Institute supports the establishment of the limit up-limit down mechanism. Our comments below focus on a specific aspect of the mechanism's proposed parameters as well as on the scope of the proposal. We urge the Commission to work closely with all market participants throughout the pilot program to resolve any issues that may arise. To that end, the Institute will supplement our views on the limit up-limit down proposal as necessary.

15 Second Limit State Pause Should Be Lengthened

Under the proposed rules, the market-wide limit up-limit down requirements would be designed to prevent trades in individual NMS stocks from occurring outside of specified price bands.[5] When one side of the market for an individual security is outside the applicable price band, the "plan processor" would be required to disseminate the national best bid or national best offer with an appropriate flag identifying it as non-executable.[6] When the other side of the market reaches the applicable price band, the market for an individual security would enter a "limit state." Trading for a stock would exit a limit state if, within 15 seconds of entering the limit state, the entire size of all limit state quotations is executed or cancelled. The proposal provides that 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 Institute believes that the time permitted for an NMS stock to exit a limit state should be lengthened. In particular, our members report that 15 seconds is not a sufficient amount of time for most investors to digest information about a limit state condition and to react to the information. The Institute therefore believes that the 15 second limit should be lengthened, at a minimum to at least 30 seconds, to provide sufficient time to reasonably attract additional available liquidity. Lengthening the 15 second timeframe also would provide a better chance that a trading pause would not subsequently be declared for a stock, a main goal of replacing the current circuit breaker pilot with the limit up-limit down mechanism. At the very least, we believe the 15 second timeframe should not be shortened and we would oppose a determination to move in this direction.[7]

Scope of the Limit Up-Limit Down Proposal

Under the proposal, the limit up-limit down mechanism would be implemented as a one-year pilot program in two phases. Phase I of the proposed plan would start immediately following the initial date of proposed plan operations and Phase II of the proposed plan would start six months after the

---

[5] In general, the price bands will consist of a lower price band and an upper price band for each NMS stock. The price bands will 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.

[6] The single plan processor responsible for consolidation of information for an NMS stock pursuant to Rule 603(b) of Regulation NMS would be responsible for calculating and disseminating the applicable price bands.

[7] At this time, and without sufficient data or experience to fully assess the operation of the proposed limit up-limit down mechanism in times of market stress, we do not have a definitive view whether the mechanism's other proposed parameters are appropriate to accomplish the Commission's goal of addressing times of extreme volatility in the securities markets.

initial date of the proposed plan (or an earlier date that may be announced by the plan processor with at least thirty days notice). During Phase I, the proposed plan would apply only to "Tier 1" NMS stocks. In Phase II, the proposed plan would apply to all NMS stocks.[8]

The Institute believes that to fully understand the usefulness of the limit up-limit down mechanism, it is imperative that as many stocks as possible be included in the pilot to gather valuable empirical data. Most significantly, as we discussed in the context of the circuit breaker pilot, given the impact on ETFs of the market events on May 6, 2010, we believe it is imperative that all ETFs be included in the pilot program on an expedited basis. We therefore encourage the participants in the plan and the Commission to expand the limit up-limit down pilot in this manner as soon as possible.[9]

* * * * *

If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, or Ari Burstein at (202) 371-5408.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Robert W. Cook, Director
James Brigagliano, Associate Director
Division of Trading and Markets

Eileen Rominger, Director
Division of Investment Management
U.S. Securities and Exchange Commission

---

[8] Tier 1 NMS stocks include all NMS stocks included in the S&P 500 index, the Russell 1000 index, and exchange-traded products listed on Schedule 1 in the appendix to the proposal. These are the same stocks currently included in the circuit breaker pilot.

[9] While we believe it is appropriate for the pilot program to apply the same parameters to ETFs initially, we also urge the Commission, exchanges and FINRA to use the pilot program to consider whether different parameters are appropriate for ETFs.