

Issuer Advisory Group, LLC

6935 Wisconsin Avenue # 500

Chevy Chase, MD 20815

301-537-9617

Corporate America's Leading Issuer Advocate

May 31, 2010

Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303

Rule-comments@sec.gov

File Numbers: SR-BATS-2010-014, SR-BX-2010-037, SR-NASDAQ-2010-061, SR-NSX-2010-05, SR-NYSE-2010-39, SR-NYSEArca-2010-41, SR-NYSEAmex-2010-46, SR-ISE-2010-48, SR-EDGA-2010-01, SR-EDGX-2010-01, SR-CBOE-2010-047, SR-FINRA-2010-025

Ladies and Gentlemen,

We thank you for the opportunity to share our thoughts on this very important matter and congratulate you on the speed and strength of your response thus far to the events of May 6, 2010.

As we indicated in our May 8, 2010 letter to Mary Schapiro (copy attached), "In this perilous time in the world and in the equity markets, we need strong leadership...to look beyond the interests of the competing markets and political grand standing and do the right thing for the investing public. No more debates; no more delays via long comment periods; the time for leadership is now". While we would have preferred an Executive Order mandating these rules as an unprecedented show of strength, we do understand the need for a firm yet measured response.

As also indicated in our May 8, 2010 letter, we recommended these circuit breakers almost a year ago now as part of our response to

your request for comment regarding the Modified Uptick Rule. It will come as no surprise to you, then, that we whole-heartedly endorse the direction of your proposal. We do, however, have a few suggestions. We have summarized those below and have provided additional details later in this correspondence.

Summary of Suggestions:

1. The inclusion of just the S&P 500 companies in the pilot is unfair and potentially undermines the objectives of the pilot. You should consider an “Opt-in” provision that would permit non-S&P 500 companies to elect to participate.
2. The need for the 10% price decline test under the Modified Uptick Rule has been muted by the new circuit breakers. You should consider eliminating this test and, in concert with the new circuit breakers, go to a straight bid test for shorting.
3. While surely a step in the right direction, the size and scope of your announced plans for a “centralized audit trail” seem gigantic. The cost and timing considerations run the risk of jeopardizing the well intended objectives of the project. We strongly recommend that the parameters be reconsidered and that you solicit greater issuer involvement in the design and implementation of this system.

Detailed Observations:

1. S&P 500 Companies:
 - a. We have had numerous conversations with companies who fully support the circuit breakers but feel that they have been “short changed” by a process that does not include them in the pilot. This is, on its face, unfair. A number of them are clients of our firm.
 - b. One non-S&P 500 company in particular served as the poster child for abused stocks on the May 6, 2010 meltdown. To not include them in the pilot sends a completely anemic signal to the investing public.
 - c. We understand that you had to draw the line somewhere in terms of an initial group of stocks. An “Opt-in” provision which would allow certain companies

to elect to participate in the pilot would represent a strong compromise.

2. Modified Uptick Rule:

- a. Not to beat a dead horse, but the events of May 6, 2010 do raise additional questions about the effectiveness of having no short sale protection unless a stock is down by 10% from the prior day close.
- b. Had such protection been in place on May 6, 2010 it is quite logical to conclude that the severity of the decline would have been tempered.
- c. The implementation of the new circuit breakers provides an opportunity to recalibrate the Modified Uptick Rule kick-in parameters.

3. Audit Trail:

- a. We are strong supporters of the move toward centralized market surveillance and the relocation of NYSE surveillance to FINRA. We believe that fragmented markets have led to fragmented surveillance and much work remains to be done to reengineer and streamline this process. Surely, a centralized audit trail makes perfect sense.
- b. Early indications are that this project will cost \$4 Billion to develop, will take three years to build and will cost \$2 Billion per year to operate. This isn't an audit trail; it's a monster.
- c. We are concerned that a project of this magnitude will take on a life of its own and that it will produce results which are inconsistent with its initial objective. This is akin to the false expectations and enormous financial burden imposed upon corporate America by Sarbanes Oxley. To date, it has produced zero convictions in spite of numerous financial scandals and amid the largest financial meltdown in nearly a century. In our opinion, it has been an abysmal failure and the SEC should take steps to ensure that similar illusions of grandeur are not duplicated.
- d. Conspicuous by its absence is any participation by issuers in this process. We strongly recommend that FINRA seek issuer guidance in both the centralization of the market surveillance functions and the

development of the audit trail project. We have approached them on this subject and will continue to do so.

4. Other Considerations:

- a. Much criticism has been lodged at the fact that the specific causes of the May 6, 2010 flash crash have not yet been identified. This is, in our opinion, very overblown. As we indicated in a Fox Business interview*, when hit by a bus, it matters not whether it was an express or a local. Rather, one's focus should be upon how to prevent it from happening again.
- b. Once the pilot is complete, the SEC should consider expanding the breakers to include the Open and the Close. These two timeframes represent a very large % of each day's trading and should not be ignored.
- c. Some have advanced the notion of restricting use of market orders, especially for stop losses. We disagree. This is more a matter of investor education than market structure.

* This portion of the FBN interview can be seen by clicking:
http://video.foxbusiness.com/v/4201292/circuit-breakers-the-solution-to-preventing-another-big-drop/?playlist_id=87185

In closing, we would like to repeat some of our comments from our May 8, 2010 to Mary Schapiro. In that memo we stated that “we take no pleasure in saying I told you so. It does, however, provide an impetus for us to put forth a strong recommendation....History will repeat itself if we fail to act swiftly and decisively on this very important issue. The cumulative effect of the current disjointed market structure will eventually have enormous implications to the credibility of and confidence in the US securities markets”. We believe that Ms. Schapiro has indeed demonstrated strong and swift leadership in responding to this matter and that the proposed circuit breakers are long overdue. We strongly encourage the SEC to consider the additional suggestions that we have put forth as they represent the collective thinking of an important constituency that has been somewhat neglected in this process – the issuer community.

Thank you very much for the opportunity to express our views and those of our clients.

Kindest Regards,

Patrick J Healy, CEO

Mr. Healy also serves as a public member of the boards of the Edga and Edgx exchanges. Since these exchanges list no publicly traded companies, there is no conflict of interest.

See attached letter to Mary Schapiro dated May 8, 2010.

Issuer Advisory Group, LLC

6935 Wisconsin Avenue # 500

Chevy Chase, MD 20815

301-537-9617

Corporate America's Leading Issuer Advocate

May 8, 2010

The Honorable Mary Schapiro, Chairman
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090

By email: rule-comments@sec.gov

Subject: The need for an immediate Executive Order mandating the development and implementation of across market circuit breakers for all NYSE and Nasdaq listed securities.

Dear Ms. Schapiro:

I am writing to you today with a shared sense of urgency and am calling upon you, as Chairman of the SEC, to issue an Executive Order mandating the immediate development and implementation of across market circuit breakers for all NYSE and Nasdaq listed securities. The events of this past week were not only ridiculous, they were completely avoidable. In this perilous time in the world and in the equity markets, we need strong leadership. I have every confidence that you are the right person at the right time to demonstrate that leadership; to look beyond the interests of the competing markets and political grand standing and do the right thing for the investing public. No more debates; no more delays via comment periods; the time for leadership is now. Below you will find four specific areas of concern:

- The need for Leadership
- Man versus Machine
- Caution Ignored
- The need for fairness

I. The Need for Leadership:

This is a rare and refreshing opportunity for the SEC to show unprecedented strength of leadership. The SEC now stands alone as the sole independent institution representing the public interests. With all due respect to the various exchanges, their priorities have changed. One of the unintended consequences of demutualization of the exchanges has been their transformation toward competing shareholder driven priorities while still fulfilling their responsibilities to the public. It is incumbent upon you to ensure that the greater good is achieved across all markets, irrespective of the competing interests of the individual markets.

II. Man versus Machine:

An unintended consequence of Reg NMS has been the "man versus machine" conflict. While the respective markets have put forth their arguments in favor of their trading methods, the simple fact of the matter is that the two models are not compatible in markets under stress. When the markets are running at varying speeds, the volume will run to the fastest venue - period; end of story. This genie does not go back in the bottle. Anyone who honestly believes that man has any chance against the machines has been living in a cave. The only realistic solution is to trigger an electronic halt followed by a reopening of the stock on its primary market.

III. Caution Ignored:

Thursday's developments are not a surprise to IAG. In our comment letter to the SEC dated June 29, 2009 relating to the need for some form of Modified Uptick Rule, we projected with great clarity and precision the likelihood of Thursday's irrational trading (see extract from our comment letter below). In our comment letter, we cited an example of a company that in 2009 experienced a similar rapid decline brought on by market manipulation. We specifically recommended the circuit breaker rules at the individual stock level that are now being contemplated. While our initial parameters were relatively light, we have tightened them considerably (any price decline of 3% in a 30

second period in an individual stock would trigger a 30 minutes halt in that stock) under our current proposal. As we previously stated in our comment letter to the SEC: "this is a no brainer."

IV. The Need for Fairness:

Following Thursday's disaster, many trades were busted. Generally, those trades more than 60% away from last sale were negated. I suggest to you that this does not pass the smell test of fairness. This was a systematic failure of historic proportions. While we have not yet quantified the dollars lost by innocent investors, one does not need to be an actuary to conclude that the dollars are significant. This resolution, in turn, will put increased pressure on the arbitration process and will further erode investor confidence. Yet again, another benefit of circuit breakers is the truncation of such litigation.

We have provided supporting details for each of the above observations as an addendum to this correspondence.

In closing, we take no pleasure in saying I told you so. It does, however, provide an impetus for us to put forth a strong recommendation. To be clear, our recommendation is that trading across all markets should be immediately halted anytime a stock moves more than 3% in 30 seconds. No debate. No exceptions. History will repeat itself if we fail to act swiftly and decisively on this very important issue. The cumulative effect of the current disjointed market structure will eventually have enormous implications to the credibility of and confidence in the US securities markets.

I thank you very much for the opportunity to express my views and those of our clients. I recognize that some of the opinions expressed above are a bit candid. We mean no disrespect to you, Mary, the Commission, its staff or any of the respective markets. These are extraordinary times in which we live and, to use a sports analogy, it's gut check time. I strongly believe that you have what it takes to make this happen and will support you in any way that I can.

Kindest Regards,
Patrick J. Healy

Addendum - Supporting Details:

- Leadership:
 - It has often been said that a camel is a horse designed by a committee. The performance of our markets last week sure looked like a camel to many of the investing public. Simply put – given the weight of global economic events and the fragile state of our recovering economy, investor confidence in our markets is paramount. We have neither the time nor the luxury for hearings, committee meetings and congressional distractions. You know what needs to be done here and, in fact, many of the exchanges agree that the time for such circuit breakers is at hand. It is a time for action.
 - Rightly or wrongly, the SEC has all too frequently been criticized for acting too slowly. Personally, I attribute that to your predecessor, and to be brutally honest, I was underwhelmed by his performance. But, you are different Mary. Based upon my observations of your role at the NASD/FINRA, you are precisely the right person at the right time to make this happen. I and others implore you to take every ounce of authority (and then some, if the need be) in the Chairman's role to issue an Executive Order mandating immediate development of individual stock circuit breakers.
 - Many will argue that further analysis and research is needed. I disagree. This is little more than a delay tactic to preserve self interests. Whether this was caused by a "fat finger" or some other means is irrelevant. The vulnerabilities of varying standards across markets are clear and manifested themselves this past week. It matters not how we caught the illness, but rather how we treat it.

- Man versus Machine:
 - In various interviews on Friday, the investing public got a first hand look at the two primary markets taking shots at their erstwhile competitors. This is to be expected and surely is no surprise. In fact, I would be disappointed in each of them had they not strongly represented their constituents. The bottom line on their debate is this: what is the proper mix of human and electronic interaction in a market structure where all but the largest exchange (as measured by trading volume) are fully electronic? Is it logical to suggest that when the NYSE goes into manual mode (due to breaking a LRP level) that the electronic markets must follow? The simple answer is that this is virtually impossible and inconsistent with the tenets upon which Reg NMS was constructed. The only practical answer is circuit breakers at the individual stock level.
 - You will recall that Reg NMS mandated that the NYSE become a “fast market” or run the risk of becoming irrelevant via the “trade through” rule. Properly so, the NYSE reengineered its trading model (and in fact they did it twice: once for the Hybrid Market Model and the second for the DMM model). As a result of this mandate, dramatic headcount reductions on the floor were implemented. Further, DMM capital requirements were significantly reduced. Those who believe that the NYSE floor (while in manual mode) has the same horsepower that it had pre-Reg NMS are delusional. This is not a criticism of the NYSE. It is simply an unintended consequence of Reg NMS. Again, the only practical answer is circuit breakers at the individual stock level.
 - The listings business has always been highly competitive. With market reforms over the past few years (removal of Rule 500, symbol portability, marketshare movement) it has become even more so. We believe that this competition has been great for issuers and laud both markets for their highly competitive and successful programs. We do not believe, however, that it is healthy for the markets to

compete negatively along the lines discussed by the respective markets last week. Undermining the competition's market quality in periods where markets are under stress is likely to have an adverse and cumulative effect upon public confidence in the markets.

Caution Ignored:

Extract from our Comment Letter to the SEC (June 29, 2009):

- The concept of utilizing a circuit breaker, as described in the proposal, should also be adopted. However, it needs to be expanded to apply to all trading and at the individual stock level (as noted in the Angel letter). Case in point: Dendreon (DNDN). On April 28, in the span of 70 seconds, the company lost over 50% of its market cap. The combination of short selling, stop loss orders and bogus information created a confluence of unfortunate events. This is ridiculous. The simple truth is that humans cannot respond as quickly as electronic circuit breakers. As part of this reform effort, the SEC should mandate that certain percentage changes (say 10%) in a given period of time (say an hour or less) would result in an immediate electronic suspension of trading across all markets. Let the humans reopen the stock. They can surely do this better than the machine. The consensus in the issuer community is that this kind of a logical stoppage in trading is a “no brainer”.
- Finally, we encourage you to reject arguments by various constituencies who maintain that trading constraints on shorts should be parallel with trading constraints on longs. They do so, of course, not because they perceive unfairness in a bullish market but rather to advance their own agenda in a bear market. The cold reality is that the potential for misconduct that creates real economic harm across the entire economy is greatest with short selling in a bear market. It exacerbates fear. For example: two people walk into a crowded theatre. The first yells “Free ice cream”. The second yells “Fire”. So, do people line up for ice cream or rush to the door? You know the rest. This sentiment is at the heart of issuers’ strong belief that some

level of increased scrutiny and protection against fear-induced short selling is needed as soon as possible.

Hotlink to comments referenced in our letter:

<http://www.sec.gov/comments/s7-08-09/s70809-3863.pdf>

<http://www.sec.gov/comments/s7-08-09/s70809-3809.pdf>

<http://www.sec.gov/comments/s7-08-09/s70809-3758.pdf>

<http://www.sec.gov/comments/s7-08-09/s70809-3757.pdf>

<http://www.sec.gov/comments/s7-08-09/s70809-3802.pdf>

<http://www.sec.gov/comments/s7-08-09/s70809-3690.pdf>

<http://www.sec.gov/comments/s7-08-09/s70809-3795.pdf>