



July 26, 2010

**By Electronic Mail (rule-comments@sec.gov)**

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

Re: File Numbers SR-BATS-2010-016, SR-BX-2010-040, SR-CBOE-2010-056, SR-CHX-2010-13, SR-EDGA-2010-03, SR-EDGX-2010-03, SR-FINRA-2010-032, SR-ISE-2010-62, SR-NASDAQ-2010-076, SR-NSX-2010-07, SR-NYSE-2010-47, SR-NYSEAmex-2010-60, SR-NYSEArca-2010-58

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> welcomes the opportunity to comment on the proposed rule changes filed by the equity and options exchanges and FINRA (self-regulatory organizations or SROs) to amend their rules relating to clearly erroneous executions.<sup>2</sup> As SIFMA noted in its recent letter filed in regard to the SEC Market Structure Roundtable<sup>3</sup> and particularly in light of the May 6<sup>th</sup> market events, SIFMA applauds the SEC’s interest in clarifying the exchanges’ and FINRA’s processes for breaking erroneous trades and supports uniformity and consistency in the application of the exchanges’ and FINRA’s clearly erroneous policies.

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<sup>1</sup> The Securities Industry and Financial Markets Association (“SIFMA”) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”). For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> See Securities Exchange Act Rel. No. 62333 (June 21, 2010), 75 Fed. Reg. 36759 (June 28,2010); Securities Exchange Act Rel. No. 62331 (June 21, 2010) 75 Fed. Reg. 36746 (June 28, 2010); Securities Exchange Act Rel. No. 62336 (June 21, 2010) 75 Fed. Reg. 36743 (June 28,2010); Securities Exchange Act Rel. No. 62337 (June 21, 2010) 75 Fed. Reg. 36739 (June 28,2010); Securities Exchange Act Rel. No. 62341 (June 21, 2010) 75 Fed. Reg. 36756 (June 28, 2010); Securities Exchange Act Rel. No. 62334 (June 21, 2010) 75 Fed. Reg. 36732 (June 28, 2010); Securities Exchange Act Rel. No. 62330 (June 21, 2010) 75 Fed. Reg. 36725 (June 28,2010); Securities Exchange Act Rel. No. 62340 (June 21, 2010) 75 Fed. Reg. 36768 (June 28,2010); Securities Exchange Act Rel. No. 62338 (June 21, 2010) 75 Fed. Reg. 36762 (June 28,2010); Securities Exchange Act Rel. No. 62339 (June 21, 2010) 75 Fed. Reg. 36765 (June 28,2010); Securities Exchange Act Rel. No. 62342 (June 21, 2010) 75 Fed. Reg. 36752 (June 28,2010); Securities Exchange Act Rel. No. 62332 (June 21, 2010) 75 Fed. Reg. 36749 (June 28,2010); Securities Exchange Act Rel. No. 62335 (June 21, 2010) 75 Fed. Reg. 37494 (June 29,2010). See also SEC to Publish for Public Comment Proposed Rules for Clearly Erroneous Trades, Press Release 2010-104 (June 17, 2010).

<sup>3</sup> Letter from Ann Vlcek, SIFMA, to Elizabeth M. Murphy, SEC re: Market Structure Roundtable, File No. 4-602 (June 25, 2010).

SIFMA believes that these clearly erroneous execution rule proposals should be considered in conjunction with a review of (1) the new single stock circuit breakers (“SSCBs”) (to determine how effective they are and how they can be improved going forward); (2) possible alternatives to SSCBs (such as a limit up/limit down approach or a hybrid approach that might more effectively target the particular market events on May 6<sup>th</sup>); and (3) any other market structure rulemaking proposal (existing or contemplated) that might impact efforts to address such adverse trading events. We have found through our many discussions on the SSCBs and the clearly erroneous execution rule proposals that these two market structure initiatives are very much linked and therefore warrant evaluation in a concurrent fashion. Also, it may be that finding and implementing tools to prevent clearly erroneous trades from happening in the first place will obviate the need for the extant rule proposals; indeed, we strongly believe that preventing these erroneous trades in the first place is the best approach for ensuring orderly markets and restoring investor confidence in them.

In addition, SIFMA believes that it is critical for the options markets to achieve consistency in their existing clearly erroneous execution rules before additional rule changes are implemented, including those proposed to address the May 6<sup>th</sup> market events. SIFMA notes that the equity markets have reached a high degree of consistency in their existing clearly erroneous execution rules, and commends those markets for their efforts to achieve that goal and the Commission for supporting such efforts. The options markets, with still some eight different clearly erroneous execution rule sets, still have considerable work ahead to reach that same level of consistency especially as it pertains to the timing of reviews and potential breaking of trades.

Although the U.S. capital markets have shown again and again that they are the most robust in the world, the events over the past two years have also highlighted certain areas which require further study and consideration. SIFMA commends the Commission for quickly focusing on problems that do arise in our markets – as it has done with the May 6<sup>th</sup> flash crash; however, SIFMA strongly urges caution in adopting too quickly a patchwork of regulations to address the problems of the past and potentially of the future. With the myriad of market structure rule proposals that have been issued in the past year, it is more critical than ever for all market participants to engage in a cohesive, thoughtful debate over all such proposals to ensure that the appropriate rules are adopted and that no quick fixes are adopted that would have unintended consequences for the markets. A deliberative rulemaking process is essential to ensuring the integrity of and the restoration of investor confidence in our markets.

#### **A. Equity Exchanges and FINRA**

If the Commission believes it must move forward with the consideration of these SRO clearly erroneous execution rule changes at this time and separately from consideration of the SSCBs or any alternative rulemaking, SIFMA offers the following comments with regard to the proposals of the equity exchanges and FINRA.

First, using the current clearly erroneous percentage parameters in combination with the new SSCB trigger prices – as opposed to last sale price, which is currently the case – has the practical effect of doubling the clearly erroneous price window for most U.S. equity securities<sup>4</sup>

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<sup>4</sup> We note in particular the 10% parameter for all stocks under \$25.00.

and is a significant expansion of the window for certain securities, i.e., stocks priced greater than \$25.00. For example, under the proposed clearly erroneous rules, the June 29<sup>th</sup> transaction in Citigroup that resulted in a trading pause and subsequent cancellation of the triggering transaction might not have been cancelled.<sup>5</sup> SIFMA believes that this expansion is excessive and proposes that the Commission replace the price-based schedule of parameters at 10%, 5%, and 3% from the SSCB trigger price with a simpler, more conservative parameter such as the greater of 2% or \$.05 from the SSCB trigger price (i.e., the threshold and not the price of the triggering trade). Alternatively, SIFMA would support the inclusion of the SSCB trigger price in addition to a comparison to the last sale as part of an analysis for clearly erroneous trades.

Second, SIFMA strongly believes that the rule proposals lack sufficient flexibility to handle truly egregious circumstances. Although SIFMA generally agrees that, in most cases, it is appropriate to have very specific and inflexible rules, there are some instances where there is incorrect information in the markets that warrant an exception to applying a hard and fast clearly erroneous execution rule. These circumstances generally involve a situation where there is incorrect information in the markets impeding the ability to arrive at an accurate price and where a trade results in significant, material and unjust enrichment and/or excessive economic harm to trading participants. SIFMA believes therefore that, in very isolated, unusual circumstances, the SROs should have some flexibility to break trades even, if necessary, after the existing deadline set for breaking erroneous trades.<sup>6</sup>

Examples of such situations include the following – and we note that some of these are based upon real problems that have occurred in recent weeks:<sup>7</sup>

- when incorrect information is disseminated to the marketplace, or the manner of dissemination is insufficient to inform the marketplace (e.g., re: number of shares outstanding);
- when there are bad quotes on multiple exchanges;
- when there is incomplete or inaccurate information related to dividends, such as stock splits and reverse splits (e.g., ex-date) or when there is a failure to relate such information; or
- when there is bad information being disseminated regarding an index calculation.

When incorrect information is injected into the markets, SIFMA believes that the SRO rules should allow the firm's CEO, CRO or designee to break a trade even if that trade does not

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<sup>5</sup> On June 29, 2010, a trade priced at \$3.3174 was printed to the tape via the FINRA/NASDAQ Trade Reporting Facility versus the last sale of \$3.80. The triggering trade occurred 12.7% below the previous trade. If the Reference Price used for the clearly erroneous determination had been based upon the trigger price of the SSCB instead of the last sale, all trades at \$3.08 and higher would have been deemed good trades. (This example assumes a market price of \$3.80, a SSCB trigger price of \$3.42 (\$3.80 less 10%), and a clearly erroneous price of \$3.08 (3.42 less 10%).) SIFMA notes that the FINRA rule proposal actually states that trades lower (higher) than the Trading Pause Trigger Price shall be deemed erroneous. However, the other SRO rule filings indicate that the Trading Pause Trigger Price shall be the Reference Price against which the Numerical Guidelines shall be applied. If the trade in Citigroup were to print on an exchange, the exchange rule filings indicate that the trade would not be ruled as Clearly Erroneous.

<sup>6</sup> SIFMA also suggests that it may be useful to allow the SRO, when necessary, to quickly announce an extended review period for an egregious clearly erroneous execution. Such an announcement would alert market participants to the fact that the review may be involved and require some time.

<sup>7</sup> While we recognize that these may be just "one-off" situations that should not be repeated, we believe that other similar such errors may occur and that the SROs should have the necessary flexibility to resolve them.

meet the exact criteria outlined in the rule or even if that trade was not able to be identified and broken within the prescribed time limit for breaking trades (as the ability to determine the exact problem may be delayed for some reason). Of course, any such decision must be made in conjunction with the other SROs to ensure consistency across the markets. Affording the SROs such flexibility will ensure the integrity and viability of the U.S. equity markets and also serve to enhance investors' confidence in the markets.

Finally, SIFMA believes that FINRA also should have the flexibility to handle egregious circumstances in the over-the-counter market, and should be given appropriate authority under FINRA Rule 11893 to address such situations in that marketplace.

## **B. Options Exchanges**

As mentioned earlier, SIFMA strongly believes that the options exchanges should work to achieve more consistent rules for clearly erroneous executions in the options markets. SIFMA believes that such a rule should prescribe the handling of erroneous trades in a manner consistent with the equity markets, and also provide the SROs with sufficient flexibility to break trades in instances where there is incorrect information in the options markets, similar to what is being advocated for the equity markets. SIFMA also notes that buy/writes or contingent orders, which are transactions that have an option leg and a stock leg, need to be considered in regard to how clearly erroneous execution rules apply across markets.

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SIFMA appreciates the opportunity to comment on these important proposed rule changes. If you have any comments or questions, please do not hesitate to contact me at 202-962-7300 or [alvcek@sifma.org](mailto:alvcek@sifma.org).

Sincerely,



Ann L. Vlcek  
 Managing Director and  
 Associated General Counsel  
 SIFMA

cc: Mary L. Schapiro, Chairman  
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