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January 24, 2011

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

Re: File No. SR-FINRA-2010-055 — Response to Comments

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing, a proposed rule change to amend FINRA Rule 6140 to eliminate the provisions regarding the handling of stop orders, delete definitions relating to stop stock transactions and relocate the definition of “initial public offering.”¹ The SEC issued the proposed rule change for notice and comment on November 5, 2010 and received two comment letters.²

One commenter expressed concern that the proposal may lead to confusion if investors are not aware of whether a quotation or a transaction will be used as the triggering event for their stop orders.³ As stated in the Proposing Release, FINRA expects that, irrespective of whether a transaction or quotation is used as the trigger for a customer stop order, each member will fully disclose its practice to customers and apply the approach consistently firm-wide to all customer orders.⁴ Thus, FINRA does not believe that lack of disclosure will be problematic or should prevent members from defining the triggering event for stop orders, subject to the aforementioned expectation.

¹ See Securities Exchange Act Release No. 63256 (November 5, 2010), 75 FR 69503 (November 12, 2010) (“Proposing Release”).

² Letter from Gary S. Sheller, Certified Financial Planner, Sheller Financial Services, dated November 24, 2010 (“Sheller”) and letter from Michael S. Nichols, Ph.D., Principal and Financial Advisor, Cutter Advisors Group, dated November 29, 2010 (“Cutter”).

³ See Cutter letter.

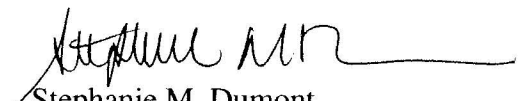
⁴ See Proposing Release. FINRA has previously reminded members that their procedures for handling customer orders must be fair, consistent, and reasonable during volatile market conditions and otherwise. *Notice to Members* 99-11 (February 1999). The *Notice* further suggested disclosures that members should provide to customers, including regarding types of orders.

Another commenter argued that, if quotations are used as a basis for triggering stop orders, market participants may manipulatively post quotations for the purpose of triggering orders.⁵ Specifically, this commenter stated that, “[t]o activate a stop order based solely upon a bid opens the process to manipulation by those inclined to do so by flashing bids during market turbulence.”⁶ However, FINRA notes that existing rules prohibit the type of activity described by the commenter. FINRA Rule 5210, among other things, prohibits publication of a quotation without having reasonable cause to believe that the quotation is a *bona fide* quotation, is not fictitious and is not published or caused to be published for any fraudulent, deceptive or manipulative purpose. Therefore, the practice of flashing quotations for the sole purpose of activating a stop order (without the intention of trading at the price and volume quoted), is impermissible.

Finally, one commenter believes stop orders always should be triggered by transactions and not quotations.⁷ Another commenter believes that customers are likely to complain where a stop order is triggered by a quotation at a price unrelated to the prices at which the security actually traded that trading day.⁸ At this time, FINRA does not believe it is appropriate to dictate to members definitions for the order types offered by the member to its customers. While one commenter opposing the proposal appears to have reached the conclusion that transactions universally are more appropriate (though the commenter provided no empirical evidence supporting this view),⁹ FINRA is aware that numerous other members reached the opposite conclusion. Nonetheless, FINRA believes that each member should be permitted to reach their own conclusion so long as, as mentioned previously, their approach is disclosed and consistently applied.

FINRA believes that the foregoing responds to the material issues raised in the comment letters to this rule filing. If you have any questions, please contact me at (202) 728-8176 or Racquel L. Russell at (202) 728-8363.

Sincerely,


Stephanie M. Dumont
Senior Vice President and
Director of Capital Markets Policy

⁵ See Sheller letter.

⁶ *Id.*

⁷ See Sheller letter.

⁸ See Cutter letter.

⁹ *Id.*