NYSE Euronext

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**Via E-mail and Federal Express**

May 10, 2012

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

**Re: Securities Exchange Act Release Nos. 65427 (Sept. 28, 2011), 76 FR 61457 (Oct. 4, 2011) (SR-NYSE-2011-48); 65432 (Sept. 28, 2011), 76 FR 61422 (Oct. 4, 2011) (SR-NYSEAmex-2011-73); and 65439 (Sept. 28, 2011), 76 FR 61463 (Oct. 4, 2011) (SR-NYSEArca-2011-68) ("Rule Filings")**

Dear Ms. Murphy:

NYSE Euronext, on behalf of the three U.S. exchanges that it operates, New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca") (collectively, the "NYSE Exchanges"), submits this letter in response to comment letters submitted to the Securities and Exchange Commission (the "SEC" or "Commission") in connection with the above-referenced Rule Filings.

## I. Background on the Rule Filings

In the Rule Filings, the NYSE Exchanges propose to amend their respective market-wide circuit breaker rules to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility. The NYSE Exchanges proposed these rule changes in consultation with other equities and options markets, the Financial Industry Regulatory Authority, Inc. ("FINRA"), and staff of the Commission.

As proposed, the NYSE Exchanges propose to amend the market-wide circuit breaker rules as follows: (i) replace the index used for measuring market declines from the Dow Jones Industrial Average ("DJIA") with the S&P 500 Index ("S&P 500"); (ii) replace the quarterly calendar recalculation of market-wide circuit breaker triggers with daily recalculations: (iii) replace the 10%, 20%, and 30% market decline percentages with 7% (Level 1), 13% (Level 2), and 20% (Level 3) market decline percentages; (iv) modify the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The NYSE Exchanges believe that these proposed amendments would update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of market-wide circuit breaker rules: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

On December 28, 2011, the Commission issued an Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Changes Relating to Trading Halts Due to Extraordinary Market Volatility ("Disapproval Order").[1] In the Disapproval Order, the Commission noted, in part, that the Rule Filings should be considered together with the proposed Regulation NMS Plan to Address Extraordinary Market Volatility[2] ("Limit Up-Limit Down Plan") and that questions remain as to whether the Rule Filings are consistent with requirements of the Securities Exchange Act of 1934.

## II. <u>Comments and Response</u>

There were four comment letters submitted with respect to the Rule Filings during the initial comment period,[3] and an additional three comment letters submitted in response to the Disapproval Order.[4] The commenters generally supported the Rule Filings, but identified various issues that they would recommend changing in the proposals. One commenter believes that additional coordination among the markets must be assessed before either the Rule Filings or the Limit Up-Limit Down Plan are implemented.[5]

In response to the comments, the NYSE Exchanges do not believe that it is necessary to make any substantive changes at this time to the proposed amendments to the market-wide circuit breakers. However, the NYSE Exchange appreciate that the issues raised should continue to

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1 *See* Securities Exchange Act Release No. 66065 (Dec. 28, 2011), 77 FR 316 (Jan. 4, 2012).

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

3 *See* letter from Craig S. Donohue, Chief Executive Officer, CME Group, Inc. to Ms. Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated October 25, 2011 ("CME I"); letter from James J. Angel, Ph.D, CFA, Associate Professor of Finance, Georgetown University to Securities and Exchange Commission, dated October 25, 2011; letter from Richard H. Baker, President and CEO, Managed Funds Association to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated October 25, 2011 ("MFA"); and letter from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated October 27, 2011 ("SIFMA I");

4 *See* letter from Timothy Quast, Managing Director, ModernIR to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated January 20, 2012; letter from Craig S. Donohue, Chief Executive Officer, CME Group, Inc. to Ms. Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated January 25, 2012 ("CME II"); and letter from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 7, 2012 ("SIFMA II")

5 *See* CME I and CME II.

be reviewed, and therefore propose to adopt the Rule Filings on a one-year pilot basis so that the changes to the market-wide circuit breakers can continue to be considered together with the Limit Up-Limit Down Plan, which is also proposed as a one-year pilot.

The following addresses in more detail certain of the issues identified in the comment letters.

### A. Relationship between Limit Up-Limit Down Plan and Market-Wide Circuit Breakers

At least one commenter proposed that a market-wide trading halt should be declared if a sufficient number of trading pauses are triggered.[6] The commenter elaborated that there should be a market-wide circuit breaker when both of the following occur: (i) 5% (or 25) of the securities in the S&P 500 are either in a limit down state or paused; and (ii) 10% of the market weighting of the SPX is in a limit down state or paused.[7] The commenter also provided alternate proposals of when a number of limit down states or individual security trading pauses should trigger a market-wide circuit breaker.

Another commenter supports the fundamental goals of revising the market-wide circuit breakers, but believes that the proposed market-wide circuit breaker changes and Limit Up-Limit Down Plan are overly complex and not coordinated enough across different classes of securities.[8] With respect to the specific issue concerning whether a market-wide circuit breaker should be triggered if a sufficient number of single-stock trading pauses or limit states are in effect, this commenter believes that such interconnectedness would add greater complexity and uncertainty and may impede, rather than promote liquidity.[9]

The NYSE Exchanges believes that attempting to identify at this stage the appropriate correlation between individual securities in a trading pause or limit state and a related trigger for a market-wide circuit breaker is premature. Because the Limit Up-Limit Down Plan has not yet been implemented, and therefore has not yet been tested, the NYSE Exchanges do not believe it is appropriate to implement a more complex structure that includes a correlation between the Limit Up-Limit Down Plan and market-wide circuit breakers until the markets and the Commission have a better understanding of how the Limit Up-Limit Down Plan will operate in practice. Rather, the NYSE Exchanges believe that implementing the proposals in their current form will provide an initial framework for addressing potential extraordinary market volatility situations that is more comprehensive than the current market structure, while at the same time leaving open the possibility for further changes after the Limit Up-Limit Down Plan's pilot phase is completed. As both the changes to the market-wide circuit

6 *See* SIFMA I at 3-4.

7 *See* SIFMA II at 5.

8 *See* CME I at 4.

9 *See id.*

breakers and the Limit Up-Limit Down Plan are being proposed on a pilot basis, the markets, the Advisory Committee to the Limit Up-Limit Down Plan, and the Commission can use the pilot period to examine data to determine whether any further revisions to the proposals should be adopted.

### B. Halts after 3:25 p.m.

Several commenters addressed the request for comments on the topic of whether a halt other than a Level 3 halt should be triggered after 3:25 p.m. Two commenters suggested that if a Level 2 (13%) decline were to occur after 3:25 p.m., a market-wide circuit breaker should be triggered.[10] One of those commenters also suggested that in such a case, the markets should still hold a closing auction.[11] Another commenter proposed an alternative that if a Level 1 (7%) decline has occurred prior to 3:25 p.m., only a Level 3 (20%) decline could trigger a halt after 3:25 p.m., but if there is no Level 1 decline prior to 3:25 p.m., a Level 2 (13%) decline could trigger a market-wide circuit breaker after 3:25 p.m. that would halt the market for the rest of the day, with no closing auction.[12]

The NYSE Exchanges agree that the type of declines that may trigger a halt after 3:25 p.m. should continue to be explored during the pilot period, but believe that the Rule Filings should be approved in their current form. In particular, the NYSE Exchanges believe that declaring a 15-minute market-wide halt after 3:25 p.m. would be disruptive to the fair and orderly closing of the markets at 4 p.m. We note that the current rule on market-wide circuit breakers already recognizes the need to allow for a fair and orderly close, and does not permit a market-wide circuit breaker to be triggered after 2:30 p.m. unless there is a decline of 20% or more. The NYSE Exchanges believe that the current proposal modernizes the market-wide circuit breaker rules by moving the last potential market-wide halt from 2:30 p.m. to 3:25 p.m., while at the same time continuing to recognize the need to allow for a fair and orderly close if there is a market decline of less than 20% prior to the close. Similar to the current rules, if there is a market-wide decline of 20% after 3:25 p.m., a halt would be triggered for the remainder of the day. The NYSE Exchanges further note that the 3:25 p.m. time was selected to allow for a 15-minute halt that would end at 3:40 p.m., thereby allowing an additional five minutes for the unrestricted entry and cancellation of market-on-close and limit-on-close orders, which are NYSE and NYSE Amex order types intended for participation in the close only.[13]

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[10] *See* SIFMA II at 7; MFA at 2.

[11] *See* SIFMA II at 7.

[12] *See* CME I at 5.

[13] *See* NYSE and NYSE Amex Equities Rule 123C.

**III. Conclusion**

As noted above, NYSE Euronext believes that the Rule Filings should be adopted on a pilot basis so that they can be implemented expeditiously, but recognizing that additional study of the impact of the Rule Filings may be warranted. Accordingly, the NYSE Exchanges respectfully respect that the Commission approve the Rule Filings in their current form, with the addition that they be adopted on a one-year pilot.

Sincerely yours,

Janet McGinness

cc: The Hon. Mary Schapiro, Chairman (via FedEx)
The Hon. Luis Aguilar, Commissioner (via FedEx)
The Hon. Daniel M. Gallagher, Commissioner (via FedEx)
The Hon. Troy Paredes, Commissioner (via FedEx)
The Hon. Elisse Walter, Commissioner (via FedEx)
Mr. Robert W. Cook, Director of Trading and Markets (via email)
Mr. David S. Shillman, Associate Director of Trading and Markets (via email)