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

Re: File No. 265-26, Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues

Dear Ms. Murphy:

NYSE Euronext appreciates the opportunity to submit comments to the Joint Commodity Futures Trading Commission-Securities Exchange Commission (the "**SEC**") Advisory Committee on Emerging Regulatory Issues (the "**Committee**").

The Committee is at present reviewing the aberrant trading that occurred on May 6, 2010 and has been charged with making recommendations to the SEC related to market structure issues that may have contributed to the volatility on May 6, as well as the disparate trading conventions and rules across various markets that were in place on that day. As the Committee completes this task, we would like to take this opportunity to discuss:

- the New York Stock Exchange's ("**NYSE**") trading system and the role of "liquidity replenishment points" ("**LRPs**");
- how the NYSE operated on May 6 and the benefits that the NYSE's system provided to the market and our listed companies;
- the interaction between LRPs and the recently adopted market-wide, single-stock circuit breakers; and
- reforms that are necessary to make market-wide, index-based circuit breakers useful.

I. Background on the NYSE and Liquidity Replenishment Points

The NYSE trading system employs a hybrid design that incorporates the best combination of cutting-edge electronic exchange technology and human judgment. NYSE rules provide

mechanisms to mitigate volatility and large price swings, a feature that is attractive to our listed companies and their investors and distinguishes our market from competitors. These rules were thoroughly vetted with the SEC before they were initially approved in 2006 and when they were subsequently amended thereafter.[1]

The NYSE's mechanism to mitigate extreme volatility is known as "Liquidity Replenishment Points" or "LRPs." LRPs temporarily pause electronic trading in stocks when price movements cross predetermined parameters based on a stock's price and Average Daily Volume. In essence, LRPs allow human judgment to intervene when trading appears irrational, akin to the pilot taking the controls of a plane off auto-pilot during turbulence. LRPs recognize that even though trading speed is important to many trading strategies, during times of extreme volatility and irrational trading, markets need to be slowed to allow human judgment to intervene and restore order.

LRPs introduce rational price discovery during irrational trading conditions. LRPs also bridge the gap when the liquidity requirement of an individual order simply can't be satisfied in a "fair and orderly" way in the millisecond when it reaches the market. As trading and matching engines have sped up, the potential market distortion created due to mismatched liquidity supply and demand at an instant in time has also increased. Much of the emphasis in the marketplace, reinforced by Regulation NMS, has been a focus on speed as a primary performance metric. LRPs and the single stock circuit breakers are a recognition that discovering the right price should be our primary objective.

It is worth noting that LRPs are different from circuit breakers, as LRPs briefly pause electronic executions but not all trading whereas circuit breakers completely halt all trading for a period of time. If an LRP is activated, NYSE quotes remain visible to market participants, and market participants can route new orders to the NYSE to be executed. There is nothing inherent in LRPs that prevents the receipt or timely execution of orders on the NYSE, and in fact most LRPs are resolved within one to two seconds.

Since their inception, NYSE has steadily worked to improve its technology and the mechanism by which LRPs are both invoked and resolved, greatly decreasing the number of LRP triggers, but also improving the speed of resolution. Today's LRPs are based on a ten

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[1] *See* Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 5 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 6, 7, and 8 to the Proposed Rule Change to Establish the Hybrid Market, Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

second window of time, meaning that a large move must occur within a ten second period to trigger an event, and most are resolved quickly.

LRPs are clearly disseminated over the various industry data feeds and fall under the "slow quote" provision of Regulation NMS, which was designed to allow venues the ability to provide for non-automated or non-instantaneous price discovery mechanisms while at the same time co-existing with fully automated execution. As such, LRPs do not limit the trading of other markets. Under Rule 611 of Regulation NMS, trading centers are not required to avoid trading through the quotations of another trading center when it is operating in a non-instantaneous mode, though they are still subject to best execution obligations. Thus, when an LRP is activated on the NYSE, other trading centers and routing broker-dealers are permitted to trade at prices inferior to the then current NYSE quote if they deem this trading consistent with their best execution responsibilities.

Furthermore, there is no evidence that LRPs are a cause of illiquidity or volatility on other exchanges. If LRPs were a cause of illiquidity and volatile trading on other exchanges, one would expect to see a disproportionate number of clearly erroneous cancelled trades in NYSE-listed stocks compared to stocks listed on other exchanges. Yet the evidence shows otherwise.

During April 2010, for example, clearly erroneous cancelled trades as a percentage of volume were 0.1011% in NYSE-listed securities and 0.1563% in Nasdaq-listed securities. There were 171,000 instances of LRPs during April 2010, but trades were cancelled during only three of these LRPs. Those three instances of LRPs involved a total slow period of roughly forty-four seconds, out of nearly 150,000 seconds that the NYSE was slow during the month of April. During the month of April, the percentage of NYSE-listed issues that were cancelled was lower than the percentage of Nasdaq-listed issues that were cancelled.[2]

From the period from June 4, 2010 to June 22, 2010, the percentage of cancelled volume in NYSE-listed securities was 0.0971% compared to 0.0878%
for Nasdaq-listed securities. Only 1.16% of all trade cancellations occurred while the NYSE was in LRP mode, and these cancellations were related to just 4 LRPs out of 70,000 LRPs issued during this period. The 70,000 LRPs during this period represented more than 50,000 seconds, which is the equivalent of two symbols being slow for more than a full day. Yet

[2] During this period 126 million shares were cancelled in NYSE-listed issues (206,600 on the NYSE), compared to 80 million in Nasdaq-listed securities. NYSE-listed volume is 2.3 times higher than Nasdaq listed volume.

only four cancellations occurred during this time: 69,996 slow quotes occurred during this period with no related trade cancellations.

This data shows that LRPs are not the cause of clearly erroneous trade cancellations or volatile trading. To the contrary, LRPs are a valuable part of the NYSE's market structure and offering to issuers and investors. LRPs decrease the effect of errors and oversized trades, and dampen short term volatility in stocks. With the myriad of factors that have been mentioned as contributing factors to May 6 – futures activity, retail market and stop loss orders, self-help invocations, and the lack of market-maker participation, just to name a few – ***singling out LRPs would be disingenuous, and no specific evidence has been given that shows they were harmful.***

II. LRPs on May 6

LRPs operated exactly as designed on May 6. As a result, prices on the NYSE were far less volatile than prices on electronic exchanges that did not have a way to intervene when liquidity gaps appeared during May 6's fast and furious trading. In the aftermath of May 6, other exchanges, including NYSE Arca, engaged in a much criticized process of cancelling approximately 15,000 trades as "clearly erroneous."[3] In contrast, not a single NYSE trade was required to be cancelled, and only 15% of the trades that ultimately were canceled were trades in securities that were listed on the NYSE. To the benefit of our listed companies and their investors, the integrity of trading on the NYSE was maintained on May 6.

Some observers have asserted that the NYSE LRPs contributed to the volatility of the markets by "withdrawing" NYSE liquidity from the larger markets as a whole. While we are gratified that this assertion recognizes the importance of NYSE's liquidity, the assertion is otherwise misguided. NYSE liquidity was not withdrawn: rather, during this period the NYSE processed ***more*** than its normal market share of orders, as investors wisely chose the more orderly NYSE environment.[4] NYSE's market share between 2:30 p.m. and 3 p.m. was 26%,

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[3] The faults of the process used to cancel trades as "clearly erroneous" prompted the national securities exchanges and the Financial Industry Regulatory Authority to file proposed rules to clarify the process for breaking erroneous trades to make it more clear when, and at what prices, trades would be broken. *See* SEC Press Release 2010-104, SEC to Publish for Public Comment Proposed Rules for Clearly Erroneous Trades, *available at* http://www.sec.gov/news/press/2010/2010-104.htm. Because of LRPs, NYSE trading on May 6 did not experience the problems that prompted these proposed changes.

[4] It is noteworthy that since NYSE does not pay high rebates for posting of limit orders, almost all retail limit orders are posted on competing venues, chiefly Nasdaq, NYSE Arca, and Direct Edge, rather than on NYSE itself. Consequently, these markets suffered more from the withdrawal of these orders.

compared to 21% on prior days. Orders routed elsewhere were not diverted away by the NYSE; rather we believe these orders overwhelmingly were intermarket sweep orders targeted to other markets. Had more market participants chosen to route their orders to the NYSE during this period, we would venture that the market-wide trading conditions would have been far less chaotic. It would achieve little good, and we believe great harm, to require all markets to continue executing orders automatically as trading becomes disorderly. Indeed, the SEC and other exchanges have now recognized the value of intervening manually when trading becomes disorderly, rather than requiring all markets to execute orders automatically in all conditions.

In addition, it is important to note that during the twenty minute period of extreme market volatility, the NYSE's Designated Market Makers ("**DMMs**") and Supplemental Liquidity Providers ("**SLPs**") had a combined participation rate of 25.6%, compared with 21.5% under ordinary conditions in April 2010. It is clear that slowing the market down allowed the market's obligated liquidity providers – the DMMs and SLPs – to do their jobs. As witnessed in the ETF market, having obligated providers alone would not have been sufficient.

Given that LRPs functioned well on May 6, it is important to consider the motivations for criticizing LRPs, as this criticism distracts attention from the challenges experienced by the fully automated markets, including our own NYSE Arca, on May 6. It appears that our fully-electronic competitors, including exchanges and off-exchange trading venues, would like to see the NYSE's unique distinction eliminated. We believe that issuers and investors see LRPs and other aspects of our hybrid model as a compelling distinction between the NYSE and other exchanges.

Indeed, it is competitive distinctions such as LRPs that the national market system is designed to encourage. As the SEC has said, "Vigorous competition among markets promotes more efficient and innovative trading services," which helps to "produce markets that offer the greatest benefits for investors and listed companies."[5] The trading activity on May 6 underscores this point: during the twenty minute period of the most extreme volatility, market share on the NYSE was five percentage points higher than usual, at 26% compared to 21% on prior days. Thus, when market participants faced extreme market conditions, they recognized the benefits of our structure and chose to transact on the NYSE.

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[5] Regulation NMS Adopting Release, Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37498-37499 (June 29, 2005).

The Committee should be wary of arguments that are cloaked as promoting market stability, but in fact are designed to eliminate the rigors and resulting benefits of a competitive marketplace.

III. LRPs and Market-Wide, Single-Stock Circuit Breakers

Each of the national securities exchanges and the Financial Industry Regulatory Authority ("**FINRA**") have recently adopted on a pilot-basis single stock, market-wide circuit breakers.[6] Under these circuit breakers, trading pauses in individual stocks in the S&P 500 when the price of such a stock moves 10% or more in the preceding five minute period.[7] At the end of the five-minute pause, the primary listing market would reopen trading in the security, followed by other exchanges and the over-the-counter market.[8] The exchanges and FINRA also recently proposed to expand this pilot to include the Russell 1000 index and certain exchange traded products, such as exchange traded funds.[9]

LRPs complement the circuit breaker pilot. LRPs are customized to the individual stock, with the LRP trigger determined by reference to the average price and volume of a particular stock. On average, LRPs are triggered by 2% to 4% movements, compared to a 10% trigger for the circuit breaker pilot. Thus, the LRPs provide a speed bump to help prevent errors that would not be caught by the circuit breaker pilot and that can prevent a circuit breaker from being triggered in the first instance. The complementary nature of LRPs contrasts with trading pauses at other exchanges that are triggered at levels that are the same as or much closer to the circuit breaker pilot trigger.

For example, on July 2, 2010, an illiquid stock was trading with a bid at $11.45. After a trade executed at that price, the next two orders on the book were cancelled, which caused the NYSE bid to drop to $8.02. If a trade had executed at the bid of $8.02, there would have been an approximately 30% decrease from the prior trade. However, LRPs prevented such a large drop from occurring. After the LRP was triggered for this stock, additional liquidity was assembled, and the next bid was published at $11.34.

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[6] Order Granting Accelerated Approval to Proposed Rule Changes Relating to Trading Pauses Due to Extraordinary Market Volatility, Exchange Act Release No. 62252 (June 10, 2010), 75 FR 28831 (May 24, 2010).

[7] *Id*.

[8] *Id*.

[9] *See, e.g.*, Exchange Act Release No. 62411 (June 30, 2010), 75 FR 39067 (July 7, 2010) (NYSE proposal).

LRPs also work in the opposite direction, preventing volatile price increases. For example, on January 29, 2010, a 688,000 share buy market order was routed to the NYSE for a stock trading at approximately $14.09. After routing orders to other exchanges to sweep their respective top of book orders, the NYSE swept its own book of orders priced near the market, leaving 394,500 shares to trade. If we would have continued to execute these shares against orders on the NYSE book, the stock would have traded at $18.50, a 31% increase. Instead, the LRP was triggered for this stock and within 17 seconds the NYSE resumed normal trading, executing 373,100 shares on the NYSE at $14.47. The remainder of the order was routed to other exchanges at the prevailing price.

The stability evidenced by these two examples is a feature of our markets that investors and issuers seek out; they want trading to be reliable and to avoid triggering circuit breakers in the first instance. It is no solution to replace a system that provides reliable, stable and consistent trading with a circuit breaker that is regularly triggered and halts trading altogether for extended periods of time.

IV. Market-Wide, Index-Based Circuit Breakers

We also urge the Committee to recommend reform of the market-wide circuit breaker rules that are in effect today.[10] These circuit breakers, which were established after 1987 market crash and revised several times in the late 1990s are based on the Dow Jones Industrial Average, and are triggered by market moves of 10%, 20% and 30%. There has not been a move greater than 10% percent in a single day since 2000. Thus, the utility of these circuit breakers is questionable.

To make these market-wide circuit breakers more effective, the triggers should be lowered to 5%, 10% and 20% for the three halt periods and should be based on a broader index, such as the S&P 500. These changes would allow the market-wide circuit breakers to better serve their purpose: halting trading for specified durations in times of extreme volatility. We also would support shortening the pause periods to thirty, sixty and ninety minutes, respectively.

To the question of measurement period, while we can understand the argument to measure percentage change from the opening price, we believe using price move from the previous night's close makes sense in terms of investor psychology given the focus on the visible "TV screen" measure of market movements.

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[10] *See, e.g.*, NYSE Rule 80B, Trading Halts Due to Extraordinary Market Volatility.

V. Conclusion

As the Committee continues to review the trading of May 6, we urge it to carefully consider available trading data. The data will show that LRPs and the NYSE were able to staunch volatility and avoid a morass of clearly erroneous trades, in stark contrast to the wild trading that occurred on other markets. If the Committee or other industry participants would like to suggest specific modifications to our LRPs that they believe would improve the efficiency of LRPs, we would encourage such a dialogue. But it is clear that LRPs are a valuable feature of the NYSE that help maintain orderly trading. Thus, the Committee should consider how best to expand, not curtail, the benefits of LRPs.

Sincerely yours,

cc: Hon. Mary Schapiro, Chairman
Hon. Luis A. Aguilar, Commissioner
Hon. Kathleen L. Casey, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Elisse B. Walter, Commissioner
Robert W. Cook, Director, Division of Trading and Markets
James A. Brigagliano, Deputy Director, Division of Trading and Markets