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

Re: File Number 4-631; Plan to Address Extraordinary Market Volatility

Dear Ms. Murphy:

Deutsche Bank Securities Inc. ("DBSI" or the "Firm") is submitting this comment letter on the joint industry plan ("Plan") to create a market-wide limit up-limit down mechanism.[1] The Plan would create market-wide limit up-limit down requirements that would prevent trades from executing outside of specified dynamic price bands. The Plan also would establish the mechanism for determining the applicable price bands for a given security and provide for a "limit state" period when a stock's best bid or offer equals a price band. As described in more detail below, DBSI supports the concept of establishing price bands for liquidity to be reestablished when a temporary sharp price spike in a stock occurs. DBSI believes that the Plan is a worthy material refinement to the existing single stock circuit breaker process. Nevertheless, DBSI has concerns that the Plan will add to the multiplicity and complexity of market-wide and market-specific circuit breakers and believes that harmonization and simplification in this area is needed. In addition to supporting the points made in the Security Industry Financial Markets Association ("SIFMA") Letter, the Firm also has specific recommendations that would improve the operation of the limit up-limit down proposal.

## I. General Issues on Circuit Breakers

In general, DBSI recognizes the rationale behind the Plan and various other proposals that have been adopted to address potentially destabilizing short-term volatility spikes. In the increasingly fast-paced trading environment where execution efficiency is measured in microseconds, it makes sense to consider mechanisms to prevent recurrences of a May 6, 2010 "Flash Crash" type of event. The Plan's limit up-limit down proposal in concept seems like a reasonable mechanism to evaluate as a means to inhibit short-term liquidity demand spikes. As seen across global markets, price bands provide a mechanism to give the market an opportunity to attract trading interest to counter a sharp, destabilizing price trend which, unchecked, could feed on itself to spiral more violently. For this reason, DBSI supports the concept of temporary price bands and commends the Commission for continuing to take a leadership role in this area.

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[1] Securities Exchange Act Release No. 64547 (May 25, 2011) 76 FR 31647 (June 1, 2011).

While DBSI supports implementing a proposal for limit up-limit down price bands, we are concerned about the proliferation of equity market circuit breakers. If the Plan were adopted, the equity markets would be subject to individual stock price bands, marketwide circuit breakers, the "alternative tick test" short sale circuit breakers, and individual circuit breakers adopted by equity markets such as so-called liquidity replenishment points. We are concerned about circuit breaker overload in that the proliferation of market-constraining mechanisms can be very confusing to market participants and difficult to implement.[2] Moreover, the fact that some markets have adopted their own mini circuit breakers and that, aside from the marketwide circuit breakers, other circuit breakers apply to stocks but not to derivatives, or vice versa[3], create the potential for disjointed markets and chaotic conditions at the precise time when clarity as to market operations is needed. Hence, DBSI recommends that the Commission undertake a broad analysis of the array of market constraining mechanisms (across markets in all equity and equity-related instruments) with a view towards simplifying and perhaps reducing the variety of such mechanisms and promoting consistency across markets for these mechanisms if possible. Eliminating the single stock circuit breakers upon the adoption of the Plan is a good first step in the process, but the Firm believes that a more holistic review by the Commission is needed.

## II. Specific Recommendations For Improvement of the Plan

With respect to the Plan itself, DBSI has several recommendations for improvement. First, where a trading pause for a stock is declared near the close in Phase II, the Plan should require all existing and new listing exchanges to implement a uniform process for determining the time at which closing auctions will occur. The proposed Plan states that if a trading pause for a stock is declared less than five minutes before the end of regular trading hours, then the primary listing exchange will attempt to execute a closing transaction using its established closing procedures. The Firm understands that the primary listing exchanges, such as the New York Stock Exchange, NASDAQ and NYSE Arca, may establish different methodologies for determining the time of the closing auction in stocks subject to a trading pause.[4] Uniform requirements are needed here. A difference in time of the closing auction between primary listing exchanges, even if only a few minutes, could create havoc for market participants attempting to complete positions or hedges by the close of trading in a stock as they would have to keep track of closing auctions occurring at different times. The potential for confusion will be exacerbated by the fact that the options markets' own closing auctions may have to vary depending upon the closing time of the primary listing exchange. While DBSI appreciates the need for exchanges to have some flexibility in determining their trading procedures, this is one area where consistency is needed to promote orderly trading and enable market participants to manage risk effectively.

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[2] See also letter to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, from Jose Marques, Managing Director, DBSI, dated July 21, 2010.

[3] See, for example, the various futures markets' stop loss circuit breakers and the inter-exchange procedures in volatile markets (e.g., http://www.cboe.com/tradtool/circuitbreaker.pdf).

[4] BATS Global Markets have announced their intention to launch a primary listing market, and this could lead to a fourth set of procedures for a listing market to establish the time for its closing transaction out of a trading pause.

Second, trades which are unrelated to the last sale of a stock should be exempted from aspects of the Plan relating to the price bands. As currently drafted, the price bands would apply to trades such as benchmark trades,[5] contingent trades where the stock execution is linked to a related derivative[6] and stopped orders (as defined in Regulation NMS, Rule 611(b)(9)(iii)). But these trades bear no relationship to the then-current market and they are printed on the tape with an identifier indicating that the trades are not priced based on the then-current market. As such, these trades do not pose the risk of destabilization even if the executions occur outside the price bands. Notably, these trades are exempted from the trade through provisions of Regulation NMS. For similar reasons, they should be exempted from the price band provisions of the Plan. We recommend that the Commission review all the types of orders and trades exempted from Rule 611 of Regulation NMS to determine which should also be exempted from the price band restrictions and other provisions of the Plan.[7]

Third, certain block facilitation trades should be exempted from the provisions of the Plan. Block facilitation trades provide liquidity to the market and have long been considered a form of market making by the Commission. They tend to be stabilizing to the market as the block positioner is committing capital to absorb large trading interest that would otherwise impact the market for the stock underlying the block order. Moreover, it is critical for a block facilitator to execute outside a band when the market is moving rapidly or it will lose the ability to trade effectively for its client. Although the price bands for Tier 1 NMS Stocks are intended to be set at 5% levels throughout much of the trading day, the Plan's provisions could result in de facto bands that are much narrower. This is because no new price bands are disseminated until a Pro-Forma Reference Price has moved 1% or more from a Reference Price. Since the price bands use the mean of transactions in the immediate five minute period, a new price band may incorporate part of a price movement that has already occurred. For example, our data analysis shows that in 2011, during the recent low volatility trading days, 30 to 50 Russell 1000 Index names per day moved more than 2% in a rolling five (5) minute period lower, which based on the methodology proposed to calculate the Reference Price would effectively reduce the trading bands in these securities to between 3- 4%. An effective price band restriction at a 3% level could severely hamstring a firm attempting to facilitate a large block for a client as the firm would be forced to execute portions of the block in small increments so as not to cross a moving price band. This scenario would fundamentally alter the ability of block facilitators to provide liquidity for customers' large trades. As a consequence, DBSI recommends that a block

[5] Two examples of benchmark trades are VWAP trades and trades involving the sale of an ADR at a price based on the weighted average execution price to purchase the foreign ordinary shares underlying the ADRs. Neither trade type raises the risk of exacerbating a sharp price trend because these trades are not executed based on the current quoted price of a stock.

[6] See Securities Exchange Act Release No. 57620 (Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934).

[7] The Commission also should evaluate the reliability of transactions from markets that are the subject of "self-help" procedures under Regulation NMS in terms of being used to calculate the Reference Price and Pro-Forma Reference Price for price bands. Markets are subject to self-help remedies under Regulation because the reliability of their quotations is questionable. It may skew the calculation of price bands to use transactions from these markets while still subject to self-help treatment.

facilitation trade be exempted from the price band restrictions of the Plan as long as it meets the following conditions: (1) be part of a block representing at least 25,000 shares; (2) be part of an order from an entity not affiliated with the block facilitating firm; (3) be printed to the tape with an identifier stating that the trade is compliant with the Intermarket Sweep Order provisions under the order protection rule of Regulation NMS; and (4) not be executed during a trading pause. The first condition is intended to ensure that the order represents more than the smallest block size (e.g., far greater than 10,000 shares) while the fourth condition ensures that no trades whose price bears a relationship to the current market price occur during a trading pause.

Fourth, under the proposed Plan, the market will enter a "Limit State" if there is a national best bid or offer at the price band level, but if market participants are quoting only outside of the band limits, the market will not enter a limit state, and the market will not initiate a trading pause. It does not make sense for a Limit State to be triggered if the national best bid or offer *equals* a price band, but not if the national best bid or offer has *crossed* a price band. The same rationale for entering a Limit State exists in either case. Thus, the Firm recommends that the Plan be revised such that trading enters a Limit State if the national best offer equals or is less than a lower limit band or if the national best offer equals or is greater than an upper limit band.

Fifth, the Firm believes that the Commission should complete an analysis of Phase I based on empirical evidence before the Plan enters Phase II. During Phase I, the Plan would apply only to the Tier 1 NMS Stocks identified in Appendix A of the Plan and the price bands would be disseminated 15 minutes after the start of trading and up until 30 minutes before the end of regular trading. In addition, trading in a stock could not enter a limit state less than 25 minutes before the end of regular trading hours. Phase II would begin six months after the initial date of Plan I or such earlier date as announced by the Plan Processor. During Phase II, the plan would apply fully to all NMS stocks and be in operation during the entirety of regular trading hours. An analysis by the Commission would enable it to determine if substantial modifications to the Plan were needed based on the experience gained during Phase I. Given the importance to a stock's price of the opening and closing phases of the trading day, a review of the operation of the Plan should occur before Phase II's extension of the Plan to the full regular trading day. It may not be prudent to transition quickly into Phase II if the experience during Phase I shows that the price bands, limit state, and trading pauses might not be well suited for the open and close of trading. DBSI suggests the following analysis should be done between Phase I and Phase II:

- Impact of Plan on held and market orders from a best execution perspective;
- Cross market analysis with regards to the impact on listed securities, related options, and equity futures products;
- Impact of the choice of the Trade Reporting Facility ("TRF") data on the reference price calculation. If the SIP does not recognize execution time for TRF reported securities but instead uses the reporting time, the Commission should analyze any impact on the results for calculating the Reference Price; and
- Impact on liquidity for names triggered under Securities Exchange Act Rule 201 (short sale alternative tick test) in conjunction with the Plan.

## III. Conclusion

DBSI appreciates the opportunity to comment on this important initiative designed to address short-term market volatility spikes. Such spikes can be destabilizing to the market and harm investor confidence in the orderliness of the equity markets. At the same time, the Commission should be careful not to overload the markets with too many restrictions and controls on natural price movements. A well designed limit up-limit down proposal by itself could be helpful in achieving the Commission's goals and we respectfully request that the Commission consider the Firm's comments on how to improve the operation of the Plan as well as the Firm's concerns about circuit breaker overload.

Sincerely,

Jose Marques

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