T. Sean Bennett
Assistant General Counsel
P: +1 301 978 8499
F: +1 301 978 8472
E: sean.bennett@nasdaqomx.com

August 12, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: SR-NASDAQ-2010-074

Dear Ms. Murphy:

This letter is submitted to respond to comments received in connection with the Securities and Exchange Commission's (the "SEC" or "Commission") review of the above-captioned proposed rule change. The proposed rule change would implement, on a limited pilot basis, the NASDAQ Volatility Guard, a volatility-based pause in trading in individual NASDAQ-listed securities traded on The NASDAQ Stock Market ("NASDAQ").

The Commission received a comment letter in support of the Volatility Guard filing from a competitor exchange.[1] In its letter, this commenter states that it is appropriate for different listing markets to adopt different approaches to trading pauses or restrictions in order to protect listed companies and their investors. This commenter notes that, in adopting Regulation NMS, the Commission acknowledged such a concept of differing approaches when it stated, "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."[2] This commenter further states that "Denying a market's right to make such a determination for its market would mean quality of price must always defer to speed of execution, and denial of this right would be contrary to the philosophy and rules of Reg. NMS and detrimental to individual investors and the market

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1 Letter from Janet M. Kissane, NYSE Euronext, to Elizabeth M. Murphy, Commission, dated August 3, 2010 (regarding SEC Release No. 34-62468; File No. SR-NASDAQ-2010-074).

2 Id. at 3 (citing Regulation NMS Adopting Release, Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37498 – 37499 (June 29, 2005)).

as a whole."[3] NASDAQ's Volatility Guard is one of many possible ways to protect issuers and investors from market volatility and uncertainty.

The Commission did not receive any letters opposed to the approval of the Volatility Guard. NASDAQ is aware, however, of three letters commenting on other rule filings and market structure issues that implicate issues raised by the Volatility Guard. NASDAQ would like to take this opportunity to address these comments here.[4] Those commenters argue that it is important for markets to handle periods of market stress in a consistent manner, and not seize on such periods as an opportunity for drawing competitive distinctions. Supporting their argument, these commenters assert that differing SRO processes cause additional confusion and will at best have no impact on volatility, and at worst will exacerbate it by accelerating a security's move to a circuit breaker. The commenters believe that the removal of liquidity from the marketplace during a Volatility Guard pause will cause greater volatility in a security, not less.

NASDAQ anticipated the potential for confusion and volatility and specifically designed the Volatility Guard to avoid them. For example, the Volatility Guard works within the triggers of the recently-adopted cross-market single stock pause process. This avoids any potential for conflicting standards between the Volatility Guard and the new single stock pause. It also will keep aberrant volatility experienced on NASDAQ from spreading to other markets. NASDAQ believes that there is no evidence that the trading pause and Imbalance Cross auction process, which are the fundamental processes of the Volatility Guard designed to allow a rational market to develop in a security subject to aberrant volatility, would increase volatility in an affected security.

The commenters appear to base their criticism of the Volatility Guard in large part on their experiences with the NYSE's Liquidity Replenishment Point ("LRP") process and its performance on May 6, 2010. The logic of such analysis is flawed. As discussed at length in its filing, NASDAQ thoroughly analyzed the NYSE LRP process in order to understand its strengths and avoid its weaknesses. As a result, NASDAQ's Volatility Guard operates very differently from the LRP process, and any comparison thereto is inappropriate and misleading. The high frequency and short duration with which the NYSE indicates that an LRP exists[5] results in LRP alerts to be considered minor by the market. Consequently,

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3 Id. at 4.

4 Letter from Ann Vlcek, SIFMA, to Elizabeth M. Murphy, SEC, dated June 25, 2010 (concerning the SEC Market Structure Roundtable; File No. 4-602); letter from Joe Ratterman, BATS, to Hon. Mary Schapiro, SEC and Hon. Gary Gensler, CFTC, dated July 1, 2010 (responding to supplemental questions from the June 22, 2010 Meeting of the CFTC and SEC Joint Advisory Committee on Emerging Regulatory Issues); and letter from Jose Marques, Deutsche Bank, to Elizabeth M. Murphy, SEC, dated July 21, 2010 (regarding file nos. SR-NYSE-2010-49, SR-NASDAQ-2010-079, SR-FINRA-2010-033).

5 In recent Congressional testimony regarding the events of May 6, 2010, the NYSE stated "On a typical day, LRPs are triggered 100-200 times, lasting for seconds at most…." See Oral Statement of Larry Leibowitz, Chief Operating Officer, NYSE Euronext, before the Senate Committee on

when a major liquidity event triggers an LRP the broader market cannot differentiate it from the minor liquidity imbalances that occur much more frequently. The Volatility Guard is based on clear and predictable criteria, which are designed not to trigger a pause in trading unless a significant imbalance has occurred. As such, the broader market is not likely to discount a Volatility Guard triggering event. Further, LRPs are triggered by order interaction that cannot be seen by market participants. LRPs conclude after varying intervals, which are dependent on events in the NYSE order book that are unseen to participants and on the subjective determination of a NYSE Designated Market Maker. The Volatility Guard could not be more different in this regard. The Volatility Guard is triggered by trades that can be seen by all market participants and it concludes with an orderly auction after a fixed-length pause. Accordingly, NASDAQ does not believe that it is appropriate to make a generic assertion that all market-based single stock trading pauses are detrimental to the overall market.

Additionally, NASDAQ is taking prudent precautions in implementing the Volatility Guard. NASDAQ proposes implementing the Volatility Guard as a pilot, limited in time and scope, so that the impact of the process can be measured and ultimately adjusted, if needed. Indeed, the purpose of the pilot is to provide empirical data upon which an assessment of the impact and efficacy of the Volatility Guard may be determined. In this regard, NASDAQ has undertaken to provide the Commission with monthly reports regarding NASDAQ's on-going analysis of the Volatility Guard during the pilot period. NASDAQ believes that this measured, empirical approach is a better means of providing solutions to the kind of aberrant volatility encountered on May 6, 2010, in contrast to bare assertions of dire consequences made by those opposed to the Volatility Guard based on unsubstantiated hypothesis and unfounded comparison of very different processes.

NASDAQ understands and shares the desire of commentors to avoid a repeat of the events of May 6, 2010. NASDAQ's believes that the Volatility Guard will serve to dampen such aberrant volatility – not add to it. As one commenter agreed, primary markets such as NASDAQ have an obligation to adopt rules that protect investors and the public interest, which include rules that protect its listed securities and those that trade in them.[6] The Volatility Guard pilot is an example of NASDAQ fulfilling this responsibility in a manner that is both expeditious and thoughtful.

Like the Commission's recent efforts in bringing the U.S. markets together to implement the single stock cross-market trading pause pilot[7], NASDAQ encourages the Commission to continue similar efforts with respect to addressing the possible causes of the aberrant

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Banking, Housing and Urban Affairs, Subcommittee on Securities, Insurance, and Investment, May 20, 2010, at 5 (http://www.nyse.com/pdfs/Larry_Leibowitz_Oral_Statement_5.20.2010.pdf).

6 Supra note 1 at 2.

7 Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-BATS-2010-014; SR-EDGA-2010-01; SR-EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; SR-CBOE-2010-047).

volatility experienced on May 6, 2010. NASDAQ does not believe, however, that the Commission should delay NASDAQ's efforts to reduce volatility on its market pending the possible adoption of a uniform market-based trading pause process, as certain commenters propose. Should the Commission determine that a consistent cross-market approach to pausing trading in a security on individual markets in times of aberrant volatility is warranted, NASDAQ will work closely with the Commission and other markets to develop such a process. In fact, data gathered during the Volatility Guard pilot may benefit the Commission in crafting such a uniform market-based single stock trading pause.

We thank the Commission for the opportunity to respond to the comments made regarding SR-NASDAQ-2010-074 and welcome the opportunity answer any further questions concerning our proposal staff may have.

Respectfully,