ModernIR
new rules. new tools.

11/11/2010

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

RE: SR-NASDAQ-2010-074 – Release No. 34-63098

Dear Ms. Murphy:

We are registering opposition to SR-NASDAQ-2010-074, a proposed rule change that would institute graduated, volatility-derived, trading pauses predicated on price ranges of securities.

We track trading patterns for dozens of public companies, applying database and software tools to historical trade-execution data on behalf of clients to help them understand price-setting forces in contemporary, complex trading environments. We advocate for issuers, whose interests and standing in the capital markets are often apparently subordinated to exchanges and their members who drive transactions and data.

Our objection is simple. The laws for U.S. capital markets require that the rules of an exchange prevent manipulative practices, promote just and equitable principles of trade, and remove impediments to a free and open market. This rule manipulates outcomes and inserts impediments into the market.

We don't object to market-wide circuit breakers. Common sense dictates that if macro events produce watershed moments in markets, interdicting risk-management tools are necessary. But these additional individual-security rules would result in almost total control of price-setting mechanisms by on one hand regulators, and on the other, exchanges – specifically here, the NASDAQ.

This is not good for issuers. Traded shares should bear at least a modicum of relation to intrinsic worth, rather than the synthetic consequences of the latest trading mechanism or risk control. Intrinsic worth cannot be determined by risk controls or incentivized intermediaries, but only by real buyers and sellers. We are in danger of creating a market utterly devoid of free function.

These rules do not restore confidence in markets. Quite the contrary. It seems cognitively dissonant to issuers and investors that exchanges and their regulators are required to promote a free and unimpeded market, and at the same time the SEC and the exchanges are veritable fountains of more impediment and fettering. The SEC already mandates a range of price controls concentrated down to the best bid or offer with a proposed gross 16% spread in new rules recommended just in the past week. Now we'll control volatility by issue to boot? What's next, assigning prices to equities?

Of equal consequence, tradable securities reflect an inherent property right for issuers and investors. Issuers rely on markets for the equity component of the balance sheet, which underpins capital-raising and financial operations. Shares are real property for the investors who own them. These rules may violate constitutionally protected property rights by regulating away value or by setting value without the consent of the parties to a transaction.

Managing risk in uniform, equitable fashion is one thing. But controlling outcomes isn't a constitutionally based principle, and it's contrary to the specific language of the law governing our capital markets. Both of these demand minimum constraint, and the absence of obfuscation and manipulation – defining characteristics of a free market.

Unless the exchange and the Commission are prepared to give every issuer the right to voluntarily abstain from volatility-based trading pauses, the effort seems to us one that ought to be abandoned. We thus ask that the Commission disapprove SR-NASDAQ-2010-074.

Yours very truly,

Timothy Quast
Managing Director