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

Re: File Numbers SR-NYSE-2010-49, SR-NASDAQ-2010-079, SR-FINRA-2010-033

Dear Ms. Murphy:

Deutsche Bank Securities Inc. ("DBSI") appreciates the opportunity to comment on the proposals by the New York Stock Exchange LLC ("NYSE"), the NASDAQ Stock Market ("Nasdaq") and the Financial Industry Regulatory Authority, Inc. ("FINRA") to amend their single stock circuit breaker pilot rules.[1] The NYSE rule proposal would amend its single stock circuit breaker rule to expand the securities covered by the rule to include securities in the Russell 1000® Index ("Russell 1000").[2] The Nasdaq and FINRA rule proposals would amend their single stock circuit breaker rules to expand the securities covered by the rules to include securities in the Russell 1000, as well as certain specified Exchange Traded Products (e.g., Exchange Traded Funds, Exchange Traded Vehicles, and Exchange Traded Notes).[3]

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[1] These proposals were filed with the Securities and Exchange Commission ("SEC" or "Commission") under Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act"). See Exchange Act Release No. 62411 (Jun. 30, 2010), 75 FR 39067 (Jul. 7, 2010) (File No. SR-NYSE-2010-49); Exchange Act Release No. 62414 (Jun. 30, 2010), 75 FR 39081 (Jul. 7, 2010) (File No. SR-NASDAQ-2010-079); Exchange Act Release No. 62416 (Jun. 30, 2010), 75 FR 39069 (Jul. 7, 2010) (File No. SR-FINRA-2010-033). Other exchanges have filed virtually identical proposed rule changes.

[2] See NYSE Rule 80C.

[3] See Nasdaq Rule 4120(a)(11) and FINRA Rule 6121.

While we are filing a comment letter on these rule proposals, our concerns are broader. In particular, in the post-Regulation NMS world where exchanges and OTC trading venues are linked, uniform conventions are needed to address questions of when securities can trade, when trading in names will be halted, and when trades can be broken. The so-called "flash crash" on May 6, 2010, during which the markets fell more than 5% in a matter of minutes and then subsequently recovered much of the decline in a similar fashion, highlighted weaknesses in our market structure stemming from networked exchanges, each having its own trading rules to address these areas in sometimes different ways.[4] To remedy these weaknesses, we believe that the Commission should continue its strong leadership role and impose uniformity in these areas. This uniformity across markets will create market certainty in times of market stress, which will help foster orderly markets and enhance confidence in the fairness of our markets.

I. Recent Initiatives

Our concerns have been highlighted by the recent initiatives to create uniform single stock circuit breakers and uniform procedures for breaking clearly erroneous trades in certain situations.[5] We commend the Commission for exhibiting strong leadership in this area. Under the Commission's direction, the self-regulatory organizations ("SROs") have adopted the uniform single stock circuit breaker rules, which provide for a five-minute (or longer) trading pause on an individual stock that moves 10% or more from a price in the preceding five-minute period.[6] Also with the Commission's leadership, the SROs are proposing to amend their clearly erroneous rules to provide for uniform treatment: (1) of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities whose executions occurred within five minutes or less; and (2) for transactions occurring on a market after a transaction triggers the single stock circuit breaker but before the resulting trading pause is in effect on the applicable market.[7]

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[4] Certain findings in the May 18, 2010 report on the flash crash ("Flash Crash Report") support this view. In this regard, the staffs of the SEC and Commodity Futures Trading Commission preliminarily found that the crash may have been caused or exacerbated by, among other things, the trading conventions among various exchanges, whereby trading was slowed at one venue (i.e., the NYSE), while continuing as normal in another (i.e., Nasdaq). See "Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues," issued on May 18, 2010 (http://www.sec.gov/sec-cftc-prelimreport.pdf).

[5] These initiatives arose out of recommendations contained in the Flash Crash Report.

[6] These rules are the subject above-referenced rule proposals on which we are filing this comment letter.

[7] See, e.g., Exchange Act Release No. 62333 (Jun. 21, 2010), 75 FR 36759 (Jun. 28, 2010) (File No. SR-NYSE-2010-47). The SROs also are proposing to impose significant limitations on their ability to deviate from the objective standards set forth in their clearly erroneous rules.

We fully support the Commission for taking these critical first steps after the flash crash. We believe further that, now that the markets have passed the triage stage immediately following the flash crash, the Commission needs to continue to take a strong leadership role, in a considered manner, to impose uniformity across the markets in the areas noted above.

II. Impact of Regulation NMS

As a result of Rule 611 of Regulation NMS (the trade-through rule), the equity markets have become a network of linked execution venues. Exchanges now have outbound routing capabilities that allow them to send orders to other exchanges or OTC market venues if the routing exchange is not at the national best bid or offer ("NBBO") when it initially receives an order. Prior to Regulation NMS, exchanges essentially were stand-alone entities, and members accordingly knew that the rules of the exchange to which they sent an order would govern the handling of that order. Now, if circumstances dictate that an order be routed out by the receiving exchange to other exchanges or OTC market venues, members submitting that order cannot be aware of which market's rules will ultimately govern the handling of that order until after that order has been executed. The different conventions among markets in the areas noted above create uncertainty about how orders will be handled in times of market stress.

III. Need for Certainty

Because of the linked nature of today's markets, market participants require certainty about when securities will trade, how erroneous orders will be handled, and the protocols for breaking trades. This certainty would come from uniform requirements in these areas. Of course, uniformity is sometimes in direct tension with the competitive environment that exchanges face. The desire to successfully compete and attract order flow -- particularly order flow from high frequency traders -- has resulted in a "race" where speed of execution is paramount, and each market's trading conventions are geared toward accommodating high frequency market flow. We discuss below examples of situations in which the competitive differences between exchanges impede orderly markets, and therefore are areas where the Commission should insist on uniformity among markets in order to benefit the markets and investors.

A. Temporary Imbalances in Liquidity

While the SROs have adopted the uniform single stock circuit breaker rules, significant differences still exist between the ways in which exchanges handle temporary imbalances in liquidity in a stock. Unlike other exchanges, the NYSE and NYSE Amex currently use a "Liquidity Replenishment Point" ("LRP") system, which temporarily converts trading in a stock from automated to manual when the LRP is reached for that stock to allow the Designated Market Maker to solicit additional liquidity before returning that stock to automated trading. The LRPs are prices away from the current last sale or quote of a stock, which are calculated according to the stock's current price and average daily volume. For example, if the last sale price of a stock is $20 and the LRP value is $0.40, an LRP would be reached at $20.40 or $19.60. The pauses in trading can last anywhere from a fraction of a second to a minute or more when the market for the affected stock is particularly volatile. No exchange other than NYSE and NYSE Amex uses the LRP.

Nasdaq has proposed implementing a "Volatility Guard" system, which would automatically suspend trading for 60 seconds, only on Nasdaq, in certain individual Nasdaq-listed securities that are the subject of significant price movements.[8] The Volatility Guard would go into effect when an execution on Nasdaq of a covered Nasdaq-listed security is at a price either above or below the applicable Threshold Range. The Threshold Range would be a fixed percentage away from a pre-established "Triggering Price'' for that security. The Triggering Price would be the price of any Nasdaq execution in that security within the prior 30 seconds of the execution at issue.[9] When the Volatility Guard is triggered, Nasdaq would institute a formal trading pause during which time Nasdaq systems are prohibited from executing orders for 60 seconds. Members, however, would be permitted to continue entering quotes and orders that would be queued during the 60-second pause.

As these descriptions demonstrate, significant differences exist between the NYSE's and NYSE Amex's LRP system and the manner in which other exchanges trade stocks. Nasdaq's Volatility Guard system would create another situation where a market imposes a discrete trading pause that is not used by other markets trading the stocks. While each approach attempts to dampen volatility in situations involving temporary imbalances in liquidity in a stock, we believe that the use of disparate approaches by different exchanges may contribute to the opposite result. These differences between the markets lead to confusion among market participants, particularly in times of market stress, leading to increased volatility. Moreover, this condition is exacerbated by the fact that certain exchanges or the OTC market may continue to trade a stock even though other markets have temporarily paused trading in that stock. Accordingly, we request that the Commission create uniformity in rules relating to temporary imbalances in liquidity.

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[8] See Exchange Act Release No. 58386 (August 19, 2008), 73 FR 50380 (August 26, 2008) (SR-NASDAQ-2007-067). Nasdaq originally proposed that the Volatility Guard system be implemented for a one-year pilot period and only cover 100 Nasdaq-listed securities. Nasdaq has since proposed to create a six-month pilot program for the Volatility Guard in 100 Nasdaq-listed securities starting on August 1, 2010. See Exchange Act Release No. 62468 (Jul. 7, 2010), 75 FR 41258 (Jul. 15, 2010) (File No. SR-NASDAQ-2010-074).

[9] For instance, under the proposed rule, if the last sale of a covered stock on Nasdaq is $30, and if $30 is higher or lower than 5% away from any Nasdaq execution in the stock during the prior 30 seconds, the Volatility Guard would be triggered for that stock.

B. Clearly Erroneous Trades

Although the exchanges are striving to make their clearly erroneous rules uniform, we believe that they should implement systems to prevent clearly erroneous trades from occurring in the first place. It is less efficient to break erroneous trades after they occur than to prevent them from occurring. Indeed, the degradation of market integrity, and the inefficiency and disruption arising from allowing executions to occur that will ultimately be broken no doubt informed the sentiment of the Flash Crash Report, which stated that "[o]f course, the primary objective should be a market structure that minimizes the need to correct erroneous trades."[10]

The technology currently exists to block erroneous orders from being executed on exchanges. In fact, certain European exchanges already successfully employ this technology (e.g., the London Stock Exchange and Euronext). The U.S. exchanges have not embraced similar technology, perhaps out of concerns (including competition) that it would introduce some latency in the processing of orders, and thus slow down trading on the various exchanges. We do not believe, though, that adding microseconds of latency should be a reason to refrain from implementing technology to block orders that have a potential to disrupt markets. We submit that by requiring U.S. exchanges to employ technology to prevent erroneous orders from being executed, the Commission will successfully reduce the potential for disruptions to the markets by eliminating the need to break erroneous trades.

We note that the Commission has proposed something akin to this in its market access proposal, although it proposes to place the responsibility for preventing erroneous trades from occurring with the broker-dealers covered by the proposal.[11] As we stated in our comment letter on that proposal, we continue to believe that in certain cases this responsibility should reside with the exchanges rather than the broker-dealers.[12] The flash crash has only reinforced our belief in this regard.

C. Erroneous Trades in the Stock and Options Markets

The stock and options markets have not embraced a consistent cross-market approach to breaking erroneous trades. For example, the options exchanges have adopted "obvious error rules" that are designed to permit the exchanges to adjust or nullify options transactions that are obviously erroneous. An obvious error will be deemed to have occurred when the execution

[10] See Flash Crash Report at 76.

[11] See Securities Exchange Act Release No. 61379 (Jan. 19, 2010), 75 FR 4007 (Jan. 29, 2010).

[12] See Letter re: Risk Management Controls for Brokers or Dealers with Market Access; File No. S7-03-10, from Jose Marques, Managing Director, Global Head of Electronic Equity Trading, DBSI, to Ms. Elizabeth Murphy, Secretary, Commission, submitted on Mar. 31, 2010 (http://www.sec.gov/comments/s7-03-10/s70310-45.pdf)

price of a transaction differs from the theoretical price for the option by an amount equal to at least the specified minimum amount indicated in the rules. On some option exchanges, however, an obvious error also will be deemed to occur if there are erroneous prints or quotes in the underlying security, or if there are verifiable systems disruptions or malfunctions. Thus, situations may arise in which stock trades are cancelled but options trades involving that stock are not cancelled and vice-versa. Accordingly, we request that the Commission continue to exert its leadership role in order to create uniformity in this area.

IV. Conclusion

Because of the linked nature of today's markets, we believe that it is critical for market participants to have uniformity as to when securities can trade, when trading in names will be halted, and when trades can be broken. Further, the various market rules which address these points must be considered as a whole and not individually to ensure that the rules work together and not against each other. This is an important issue for the Commission because certainty in these areas makes market participants more likely to provide liquidity in times of market stress, which helps foster fair and orderly markets and ultimately redounds to the benefit of all investors. Moreover, it will help reduce the uncertainty and chaotic nature of short-term volatility spikes in individual stocks. Accordingly, we respectfully request that the Commission, as it has done in the past (e.g., establishing uniform market-wide circuit breakers across the markets following the 1987 market crash), act to impose uniformity in these areas.

Sincerely,

Jose Marques

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cc: Chairman Mary Schapiro
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