INVESTMENT COMPANY INSTITUTE

COMMENT LETTER

June 24, 2010

ICI Follow-Up Submission for SEC Market Structure Roundtable (pdf)

June 23, 2010 Ms. Elizabeth M. Murphy Secretary Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549 Re: Market Structure Roundtable (File No. 4-602) Dear Ms. Murphy: The Investment Company Institute1 is writing to follow-up on its earlier submission regarding the Commission's June 2 roundtable examining the current U.S. equity market structure.2 We are pleased that the Commission held the roundtable to facilitate a discussion of the critical issues impacting the securities markets, including how investors are faring under the current market structure, high frequency trading and undisplayed liquidity, and the relationship of these issues to the market events that occurred on May 6, 2010. Despite the differing views expressed by roundtable participants on many of the issues discussed, it was clear that most participants agreed that an examination of the current structure of the U.S. equity markets is warranted given the significant changes in the markets. In addition, most participants believed that given the events that occurred on May 6, the issues considered at the roundtable have taken on increased importance. Our prior submission discusses in detail our recommendations on the reform of the current market structure. We urge the Commission to move expeditiously to examine the issues facing our markets and to consider the Institute's recommendations on behalf of significant buyside participants. 1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.97 trillion and serve almost 90 million shareholders. 2 See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 1, 2010. Ms. Elizabeth M. Murphy June 23, 2010 Page 2 of 4 I. Issues Addressed in SEC Market Structure Concept Release The recommendations set forth by the Institute in our prior submission for the roundtable and in our comment letter on the Commission's concept release on the U.S. equity market structure3 were echoed by many roundtable participants.4 In particular, we were pleased that several roundtable participants, representing both the buyside and the sellside, called for increased transparency regarding specific trading issues such as the order routing and execution practices of broker-dealers and other trading venues. Improved information about current trading practices and these market participants would allow investors to make better informed investment decisions and would assist regulators in understanding and surveiling the markets, a need that was made starkly apparent in the aftermath of the May 6 market events. As expected, there was no agreement on the benefits or costs of high frequency trading to the securities markets.5 We particularly agree with the statements of many participants regarding the need for more transparency and an examination of the current rules and regulations surrounding high frequency trading. For example, one roundtable participant highlighted the need for: (1) more information about high frequency traders and the practices of high frequency trading firms; (2) an examination of whether high frequency trading firms should be subjected to certain quoting obligations; (3) an examination of the strategies employed by high frequency trading firms; (4) a means to curb the increasing number of order cancellations in the securities markets; and (5) an examination of the incentives that currently exist for market participants to route orders to particular venues.6 As the Commission continues to examine the role of high frequency trading, we echo these and other related concerns. 3 See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated April 21, 2010. 4 See, e.g., Statement of Larry Leibowitz, Chief Operating Officer, NYSE Euronext, at SEC Market Structure Roundtable, June 2, 2010 (among the moderate steps that should be looked at are obligations to the market by liquidity providers and incenting of displayed liquidity, as well as additional disclosure and scrutiny of order handling practices, both for institutional and retail orders). 5 See, e.g., Statement of Sal Arnuk, Co-Founder and Partner, Themis Trading, at SEC Market Structure Roundtable, June 2, 2010 ("While we believe that there may in fact be some beneficial types and attributes of HFT, we also know first-hand that there are dark and murkier portions."); but see Statement of Jeffrey Wecker, President & Chief Executive Officer, Lime Brokerage, at SEC Market Structure Roundtable, June 2, 2010 ("High frequency trading provides a dramatic increase in liquidity, increased competition, promotes electronic efficiencies and lowers the cost of trading, both through narrower spreads and lower commissions – all of which have contributed to making the United States equity markets the best in the world). 6 See Statement of Kevin Cronin, Global Head of Equity Trading, Invesco, at SEC Market Structure Roundtable, June 2, 2010. Ms. Elizabeth M. Murphy June 23, 2010 Page 3 of 4 Finally, as panelists recognized, undisplayed liquidity provides an important mechanism for transactions to interact without displaying the full scale of an investor's trading interest, thereby lessening the cost of implementing trading ideas and mitigating the risk of information leakage.7 Other panelists noted that these venues can impede transparency. We continue to support the Commission's efforts to examine the impact of certain undisplayed liquidity on price discovery on the markets, while balancing the competing goal of protecting fund shareholders and other investors from the effects of information leakage. II. Market Structure Issues Arising from May 6 Events While the roundtable focused on the three major issues highlighted in the concept release, the events of May 6 and the related market structure issues were a strong underlying theme during the discussions. In our prior submission, we discussed the need for: (1) updated market-wide and stock-by- stock circuit breakers; (2) better procedures for resolving clearly erroneous trades; (3) an examination of the use of market orders; (4) an examination of the inconsistent practices of exchanges regarding addressing major price movements in stocks; and (5) better coordination across all types of markets. The Commission has focused on implementing the stock-by-stock circuit breaker pilot8 and the national securities exchanges and FINRA have now filed proposed rules to clarify the process for breaking erroneous trades. We urge the Commission to move quickly to address the other market structure issues noted above. Most significantly, in addition to the market structure issues under the purview of the Commission that need to be examined, we urge a more robust discussion and examination of the linkages and interdependency of the equity, options and futures markets. We have seen how the connection between price discovery for the broader stock market and activity in the futures markets impacted events on May 6. It will be critical for the development of effective regulation that these markets work together as new regulations are developed. * * * * * 7 See, e.g., Statement of Daniel Mathisson, Managing Director, Credit Suisse, at SEC Market Structure Roundtable, June 2, 2010 ("Institutional traders, who collectively invest the savings of millions of Americans, expend a great deal of effort finding ways to buy and sell large amounts of stock in a manner that will not adversely move stock prices and hurt their investors. To accomplish this, traders have always used a variety of trading techniques, including the use of "dark" liquidity.") 8 The Institute remains concerned about the exclusion, to date, of exchange-traded funds ("ETFs") from the stock-by-stock circuit breaker pilot. As we noted in our comment letter on the SRO circuit breaker proposals, given the impact on ETFs of the market events on May 6, we believe it is imperative that ETFs be included in the circuit breaker pilot program as soon as possible. See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated June 3, 2010. Ms. Elizabeth M. Murphy June 23, 2010 Page 4 of 4 As always, if we can be of any assistance as the Commission continues its examination of trading and market structure issues, please feel free to contact me directly at (202) 326-5815, or Ari Burstein at (202) 371-5408. Sincerely, /s/ Karrie McMillan Karrie McMillan General Counsel cc: The Honorable Mary L. Schapiro The Honorable Kathleen L. Casey The Honorable Elisse B. Walter The Honorable Luis A. Aguilar The Honorable Troy A. Paredes Robert W. Cook, Director James Brigagliano, Deputy Director David Shillman, Associate Director Division of Trading and Markets Andrew "Buddy" Donohue, Director Division of Investment Management U.S. Securities and Exchange Commission

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