Comment Letter on Proposed Circuit Breaker Rule Amendments, March 1998

March 16, 1998

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 80B ("Trading Halts Due to Extraordinary Market Volatility")
File No. SR-NYSE-98-06

Dear Mr. Katz:

The Investment Company Institute[1] is pleased to respond to the Securities and Exchange Commission's request for comments on the New York Stock Exchange, Inc. ("NYSE") proposal to amend Rule 80B ("Trading Halts Due to Extraordinary Market Volatility").[2] Investment companies are significant holders of equity securities and, as such, are active participants in the equity markets.

The ICI supports the proposed amendments to the trading halt triggers. While we continue to have serious reservations about any trading halts that could result in the market closing early for the remainder of the day, we are pleased that the likelihood of this occurring has been significantly reduced under the NYSE's proposal. The ICI also supports the proposed amendment to Rule 80B to require that price indications be made during an intra-day trading halt, but we recommend that it be expanded beyond the thirty stocks that comprise the DJIA, as proposed. The ICI's comments on the proposed amendments to NYSE Rule 80B are discussed more fully below.

Increasing the Trading Halt Triggers

The proposed amendments to NYSE Rule 80B would set the trading halt triggers at declines of ten, twenty and thirty percent of the Dow Jones Industrial Average ("DJIA").[3] The ICI strongly supports increasing the triggers. The current triggers of 350 and 550 points of the DJIA are no longer reflective of "extraordinary market volatility," as contemplated by the rule. This was clearly demonstrated on October 27, 1997, when the second level was reached, and the market closed early, even though the market was down only 7.2 percent.

In addition to increasing the triggers to more appropriate levels, the proposed amendments would base the triggers on a percentage decline rather than on specified point changes. This change will ensure that the triggers will continue to represent significant changes in the market on an ongoing basis.

The Importance of an Orderly Market Close

The ICI continues to have concerns about trading halts that would cause the markets to close earlier than the normal 4:00 pm close, for the reasons discussed below.[4]

First, closing the markets prematurely will likely have the adverse effect of accelerating a decline, as some investors may feel compelled to try to sell before the close, rather than providing an opportunity for the markets to stabilize.

Second, an early market close will be harmful to the over 60 million mutual fund shareholders who have come to expect that the markets will close at 4:00 pm, and that orders placed up until that time will get that day's net asset value.

Third, an early market close may hinder the ability of mutual funds to price their portfolios in a timely manner. In recent Congressional testimony, Chairman Levitt stated, "Mutual funds cannot calculate daily net asset value without a market close from which to price. The absence of net asset values for mutual funds also could undermine general investor confidence in the financial markets. This underscores the importance of thinking very hard before concluding that markets should close early for the day."[5]

While the NYSE's proposal does not eliminate the possibility that a trading halt could result in the market closing prematurely, we are pleased that this could only occur as a result of a market decline of twenty percent at or after 2:00 pm or thirty percent at any time during the day. This change should greatly minimize the potential for an early market close and, thus, largely addresses our concerns.[6]

Requiring Price Indications

The NYSE proposes to amend the rule to require that price indications be made during an intra-day trading halt for stocks comprising the DJIA. The ICI supports this proposal, but recommends that it be expanded beyond the stocks that comprise the DJIA. The Release states that price indications are designed to supply information to market participants on expected pricing levels for these highly capitalized stocks. The objective of this requirement could be better achieved if, instead of requiring price indications for only the thirty stocks comprising the DJIA, they were required for stocks comprising the S&P 100 index or some other index that contains a substantial number of the NYSE's most active highly capitalized stocks.

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The ICI appreciates the opportunity to comment on this important matter. If you have any questions regarding our comments, please contact the undersigned at 202/326-5815 or Amy Lancellotta at 202/326-5824.

Sincerely,

Craig S. Tyle
General Counsel

cc: Chairman Arthur J. Levitt, Jr.
Commissioner Isaac C. Hunt, Jr.
Commissioner Norman Johnson
Commissioner Paul R. Carey
Commissioner Laura Simone Unger

Barry P. Barbash, Director
Division of Investment Management

Richard R. Lindsey, Director
Division of Market Regulation

ENDNOTES

[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 6,860 open-end investment companies ("mutual funds"), 441 closed-end investment companies, and 10 sponsors of unit investment trusts. Its mutual fund members have assets of about $4.419 trillion, accounting for approximately 95% of total industry assets, and have over 62 million individual shareholders.

[2] See Exchange Act Release No. 34-39666 (Feb. 13, 1998).

[3] Under the proposal, these levels will be calculated at the beginning of each calendar quarter, using the average closing value of the DJIA over the prior month. Each trigger will be rounded to the nearest 50 points. It is unclear how information about the reset trigger levels will be disseminated. The ICI requests that the SEC address this point in the release adopting these amendments.

[4] See, e.g., Statement for the Record Before the Senate Banking Committee By the Investment Company Institute on Market Circuit Breakers, dated February 11, 1998; Letter from Matthew P. Fink, President, ICI, to Arthur J. Levitt, Jr., Chairman, SEC, dated January 27, 1998.

[5] Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Circuit Breakers, Before the Subcommittee on Securities, Senate Committee on Banking, Housing and Urban Affairs, January 29, 1998.

[6] The proposed amendments raise an operational issue regarding market-on-close orders (i.e., orders to buy or sell securities at the

market closing price) that we request be addressed in the release adopting the amendments or reflected in changes to Rule 80B. Specifically, if the trading levels that would close the markets early are reached, it is essential that there be a "formal" market close to allow these orders to be executed. At the very least, guidance should be provided on how such orders should be handled under those circumstances.