

March 1, 2010

VIA EMAIL AND OVERNIGHT COURIER

Elizabeth M. Murphy, Esq.
Secretary
Securities and Exchange Commission
Station Place
100 F Street, NE
Washington, D.C. 20549-9303

Re: SEC Release No. 34-61414; File No. S7-04-10
Purchase of Certain Equity Securities by the issuer and Others
Comment Letter (“Response”) to Proposed Rule

Dear Ms. Murphy:

NYSE Euronext, on behalf of the New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSE Amex”), and NYSE Arca Inc. (“NYSE Arca”), appreciates the opportunity to comment on the Securities and Exchange Commission’s proposing release; “Purchase of Certain Equity Securities by the Issuer and Others (Release No. 34-61414; File No. S7-04-10)(“the proposing release”) to amend the safe harbor provisions of Rule 10b-18 under the Securities Exchange Act of 1934 (the “Act”).

NYSE Euronext supports the Commission’s commitment to clarify and modernize Rule 10b-18 and agrees with the proposed rule’s expansion of the safe harbor provisions to accommodate market developments since the rule’s adoption in 1982.

In addition to the specific proposals put forth, the Commission seeks comment on whether to except “other passive pricing mechanisms” (specifically systems that have passive or independently-derived pricing mechanisms, such as orders that execute at the “mid-point” of the national best bid and offer (“NBBO”) or “mid-peg” orders) from the price condition in the rule. NYSE Euronext strongly supports such an exception.

The Commission describes these passive pricing trading system as those that match buy and sell orders at various times of the day, if:

- (i) matches occur at an externally derived price within the existing market and above the current national best bid;
- (ii) sellers and purchasers are not assured of receiving a matching order;
- (iii) sellers and purchasers do not know when a match will occur;
- (iv) persons relying on the exception are not represented in the primary market offer or otherwise influence the primary market bid or offer at the time of the transaction;
- (v) transactions in the electronic trading system are not made for the purpose of creating actual, or apparent, active trading in, or depressing or otherwise manipulating the price



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of, any security; (vi) the covered security qualifies as an “actively-traded security” (as defined in rule 101(c)(1) of Regulation M); and (vii) during the period of time in which the electronic trading system may match buying and selling interest, there is no solicitation of customer orders, or any communication with customers that the match has not yet occurred.

NYSE Euronext agrees with the Commission that use of mid-point match systems such as NYSE’s MatchPointSM (“MatchPoint”) system reduce or eliminate the sort of manipulation threat that the Commission’s Rule 10b-18 was intended to address. In particular, as outlined further below, we believe that because the systems systemically limit or eliminate the ability of participants to manipulate the prices of their securities, the use of such systems should be presumptively within the rule’s safe harbor even if the autonomous operation of such systems could result in trades are outside of the price or time parameters of the safe harbor.¹

MatchPoint and similar systems structurally protect against manipulation in a number of ways. Among other things, users must electronically transmit their market and limit orders for execution at a later time, rather than immediate execution, which inhibits the ability of a participant to take advantage of anomalous pricing in the market that only exists for a short duration. Risk is further mitigated by the point-in-time nature of the executions (during certain predetermined times throughout the trading day and in a single matching session after hours), which would make it particularly difficult for a participant to time the market precisely. What’s more, the time of execution is itself randomly selected (but not announced) by an independent algorithm, at and after which time no additional interest is permitted to enter the system; this randomness insulates the trade even further from manipulative influence.

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In particular, we note that executions within MatchPoint necessarily occur at prices above the best bid, since they match at the midpoint between the bid and the offer. Depending on when the execution occurs, the execution may also be above the highest reported last sale in the subject security. Given the passive nature of the pricing and the point-in-time operation of the MatchPoint system, we believe that these executions should be within the exception outlined by the Commission in its release, but would request that if the Commission adopts such an exception, it clarify in the final rule release that our reading of the proposed exception is correct. In addition, we note, in connection with NYSE’s MatchPoint system particularly, that the system conducts a matching session at 9:45 a.m., which is within thirty minutes of the opening of trading, and therefore is not within the provisions of the Rule 10b-18 safe harbor as currently drafted. Based on the reasoning outlined in this letter, in the event that the Commission adopts an exception to the rule for point-in-time reference-priced matching systems, we would urge the Commission to extend that exception to all trades within the system, including trades within thirty minutes of the opening or closing of trading.



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Users also cannot affect the price of a security through trading in MatchPoint, for two reasons: first, bids and offers in MatchPoint are not displayed, meaning that interest entered into MatchPoint does not exert upward or downward pressure on the price of the security at issue in the open market; and second, users cannot directly affect the price of a security since they do not “choose” a price at which to trade – instead, intra-day executions are priced at the midpoint of the NBBO, and after hour executions are priced at the official last sale price. Both of these factors also help to mitigate the risk of manipulation of the type that the Commission was concerned about in enacting Rule 10b-18.

Finally, MatchPoint does not guarantee order executions or provide price improvement. Rather, when there is a match within the system, the execution is allocated on a *pro rata* basis among all participants (that is, there is no priority among participants). As a result, participants would be unlikely to use MatchPoint to effect a manipulative strategy, since they would not have a certainty of execution even where there was a match.

In sum, because MatchPoint and similar point-in-time reference-price matching systems tend to minimize or eliminate the risk of manipulation, we believe that they are appropriate tools to effect corporate buy-back orders, and should be excepted under the terms of Rule 10b-18. Accordingly, we would encourage the Commission to adopt an exception to the rule that permits these systems to be used for corporate repurchases.

NYSE Euronext also believes that the safe-harbor in Rule 10b-18 should include executions that result from the use of electronically pegging order types, which are linked (“pegged”) to the National Best Bid. In this regard, we note that the Commission recently issued interpretive guidance to the NYSE and NYSE Amex with respect to the use of the NYSE and NYSE Amex’s pegging e-quote in connection with Rule 10b-18.² In that guidance, the Commission staff confirmed that the use of a pegging e-quote is presumptively consistent with the safe harbor provision of the rule, if effected in accordance with NYSE and NYSE Amex rules, and in the manner described in the request for interpretation. While we believe that the interpretive guidance would continue to apply in the context of the Commission’s proposed amendment to Rule 10b-18, we believe it would be helpful to market participants for the Commission to confirm that such electronically pegging order types remain consistent with the amended rule.

² See Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, SEC, to Daniel M. Labovitz, Vice President, NYSE Regulation, Inc., dated February 2, 2010.



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NYSE Euronext recognizes and appreciates the Commission's ongoing efforts in reviewing Rule 10b-18 in light of the market developments that have occurred since 1982. In particular, NYSE Euronext supports the Commission's goal of modernizing and clarifying Rule 10b-18; to that end, we believe the Commission should adopt the proposed amendments, but also expand exceptions to the Rule to include issuer repurchases effected through certain electronic systems that match orders at various times of the trading day and at independently-derived prices. These actions would be appropriate under current market models and would help to ensure appropriate safeguards and fairness in relation to issuer repurchases of securities.

Should you have any questions regarding this letter, please contact Daniel M. Labovitz, Vice President, Office of General Counsel, NYSE Regulation, Inc., at (212) 656-2081 or Claudia Crowley, Senior Vice President and Chief of Staff, NYSE Regulation, Inc., at (212) 656-4631.

Very truly yours,



Janet M. Kissane

cc: The Hon. Mary Schapiro, Chairman
The Hon. Luis Aguilar, Commissioner
The Hon. Kathleen Casey, Commissioner
The Hon. Troy Paredes, Commissioner
The Hon. Elisse Walter, Commissioner
Mr. Robert W. Cook, Director of Trading and Markets
Mr. James Brigagliano, Deputy Director of Trading and Markets
Mr. David S. Shillman, Associate Director of Trading and Markets