

**Mary Yeager**  
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Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

August 11, 2006

Ms. Catherine McGuire  
Chief Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: File No. SR-NYSE-2005-58 Relating to Proposed Amendments to  
NYSE Rule 312(f) (“Changes within Member Organizations”)

Dear Ms. McGuire:

On August 15, 2005, the New York Stock Exchange (“NYSE” or “the Exchange”), pursuant to Rule 19b-4<sup>1</sup> under the Securities Exchange Act of 1934, submitted to the Securities and Exchange Commission (the “SEC”) File No. SR-NYSE-2005-58, which proposed several amendments to NYSE Rule 312(f) (the “Rule”) that would permit member organizations to recommend purchases of the securities of corporations which they control and those under common control with them, subject to appropriate disclosure of the existence and nature of such relationship.

The filing was published in the Federal Register for comment.<sup>2</sup> The comment period resulted in a letter from Sullivan & Cromwell LLP (“Sullivan & Cromwell”) dated June 16, 2006. This letter responds to the Sullivan & Cromwell comment letter.

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<sup>1</sup> See CFR 240.19b-4.

<sup>2</sup> See Release No. 34-53840 (May 19, 2006); 70 FR 30458 (May 26, 2006)(SR-NYSE-2005-58).

By way of background, Rule 312(f) prohibits a member corporation from soliciting transactions in its own publicly traded securities and from making any recommendations with respect to its publicly traded securities or the securities issued by any corporation controlling, controlled by or under common control with such member corporation. The intent of the Rule is to mitigate conflicts of interest that may arise when recommending the public securities of companies in which the member organization may have an interest.

The Sullivan & Cromwell letter comments on expansion of Rule 312(f) prohibitions to non-publicly held securities and the continued prohibitions against the solicitation of transactions by member organizations in the securities of their parent corporation. NYSE Regulation welcomes the comments of Sullivan & Cromwell and appreciates their general support of the proposed amendments.

With regard to the extension of the coverage of Rule 312(f) to non-publicly traded securities, Sullivan and Cromwell foresaw a possible impediment to certain negotiated transactions and noted the long-recognized sophistication of purchasers of private placements. However, we must emphasize the need to assure coverage of all post-distribution transactions by member organizations in affiliated securities, and not solely those which are sold pursuant to public offerings. The Exchange believes that the minimal disclosure provisions required by the proposed rule will not impose a significant burden on the trading in such instruments, nor does it see any basis for denying even sophisticated purchasers the benefits of such critical information.

We respectfully disagree with the suggestion that the prohibition against the solicitation of transactions in the securities of the member organization, parent or Material Associated Person<sup>3</sup> is at present unwarranted. The conflicts which the original rule was written to prevent have not disappeared. Both the present rule and the rule as amended would in no way limit the ability of “a counterparty or customer with a full understanding of the relationship...to engage” in such transactions. It is not the transaction which is prohibited, but rather the recommendation of the transaction; the Rule allows unsolicited transactions. While the commenter is correct in noting that the NASD does not have a regulation analogous to the Rule, even a cursory review of the numerous NASD and SEC enforcement actions involving the recommendation by NASD member organizations of their securities, and the egregiously fraudulent conduct involved, would recommend against the removal of the current restrictions by the Exchange

Accordingly, the Exchange believes the prohibitive aspects of the proposed Rule are warranted and beneficial and thus does not intend to revise the proposed Rule.

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<sup>3</sup> See Rule 17h-1T under the Securities and Exchange Act of 1934 for indicia of Material Associated Person status.

Please feel free to contact William Jannace at 212-656-2744 or Gregory Taylor at 212-656-2920 should you have any questions concerning the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Yeager". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Mary Yeager  
Assistant Secretary