

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

July 20, 2006

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D. C. 20549-1090

RE: SR-NYSE-2006-07  
regarding NYSE Rule 104 – Dealings by Specialists (Destabilizing Trades)

Dear Ms. Morris:

The New York Stock Exchange (the “Exchange”) is writing to respond to comments by George Rutherford (“Rutherford” or the “commentator”), dated April 24, 2006 concerning the above referenced filing. The filing proposes to amend NYSE Rule 104 (Dealings by Specialists) to permit specialists to effect destabilizing dealer account transactions when matching the national best bid or offer, without requiring that they obtain Floor Official approval.

The Exchange notes that the comments raised by Mr. Rutherford concern his view that the Floor Official approval requirement is “a necessary safeguard against specialist over-reaching,...” and that paralleling this proposal to a similar rule change to remove Floor Official approval for destabilizing specialist transactions in exchange traded funds (“ETFs”) is inaccurate.

As to the first point, specialist transactions for their own account are subject to specific expectations of performance. These include a specialist’s affirmative and negative obligations, a responsibility to maintain a two-sided market with quotations that are timely and accurately reflect market conditions and a duty to ensure that a specialist’s principal transactions are designed to contribute to the maintenance of price continuity with reasonable depth. (See, for example, Rule 104.10(3).) A Floor Official’s approval of a destabilizing transaction for a specialist’s proprietary account is but one part of the test of whether a specialist’s proprietary transaction is proper. It is not correct, as the commentator states, that the Floor Official’s approval determines whether such a transaction is necessary. In addition, the Exchange will continue to surveil specialists’

proprietary transactions for compliance with the Exchange's rules. This oversight and the other provisions of Rule 104 provide adequate review that is not enhanced by Floor Official approval, particularly in this situation where an independent party has established the price at which the specialist is trading.

In raising the second criticism of the proposed rule change, the commentator states that "(P)rices are not objectively determined..." with respect to transactions in non-ETF equity securities, and that "most investors look to prices prevailing in the primary market, not nominal bids/offers in tertiary markets". The first statement is offered with no basis, and suggests that prices in other than a primary market have little or no validity. The Securities and Exchange Commission's adoption of the Order Protection Rule as part of Regulation NMS<sup>1</sup> clearly undermines the validity of the commentator's assertion. As to the second point, investors, and specialists, will rightly review pricing information from several sources and assign each source the weight they consider proper in making a trading or investing decision. The proposed rule change does not relieve specialists of their responsibilities to the Exchange marketplace and the standards discussed above. Nor does it require a specialist to automatically match a price in another market. Rather, it gives the specialist increased flexibility to trade keep the Exchange's market competitive through a trade at the national best bid or offer price without requiring Floor Official approval.

Sincerely,

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

Mary Yeager  
Assistant Secretary

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<sup>1</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 17 CFR Parts 200, 201, 230, 240, 242, 249 and 270.