January 17, 2007

To: Ms. Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

From: Andrew Rothlein

Re: SR-NYSE-2006-120

Dear Ms. Morris,

Thank you for accepting this letter on behalf of the SEC. The Commission's regulatory province of ensuring just and equitable principles of trade in U.S. markets makes it a fitting body to review and manage the issues raised herein. Investor trust is a difficult confidence to earn and an easy one to lose. Understandably essential is the SEC's insistence on only the highest standards for the markets that it oversees, however unintentional deviation from those standards may be. Although this comment is intended to rectify a specific situation, the Commission's attention to this matter can clearly validate its standing as an indiscriminate leveler of playing fields.

PURPOSE

This comment will assert the position of NYSE Option Trading Rights (OTR's) as the legal trading licenses for all present and future NYSE option products, including those traded on Euronext. It includes facts, responses to NYSE objections, and a discussion of SEC concerns. Additional information and clarification will be made available to the SEC upon request.

DEFINITIONS

NYSE Membership (approximately 1,316 - pre-ARCA)	Equity owner of the Exchange whose trading license included all NYSE products.
NYSE Membership (EX-OTR) (approximately 50 - pre-ARCA)	Equity owner of the Exchange whose trading license included all NYSE products except options since their OTR's had been separated and sold.
NYSE Option Trading Right (OTR) (approximately 50 - current)	Trading license included all NYSE option products. One OTR was issued to each of the 1,366 full members in 1983.

BACKGROUND

In December, 2005, the NYSE filed a proposal with the SEC asking for permission to form a business combination with Archipelago Holdings, Inc. The Exchange was taking steps to reenter the option business, a strategy that along with the acquisition of ARCA was to be accomplished by the globalization/consolidation process in which it is currently engaged. The advent of the NYSE's need to fully develop an option business had been anticipated for many years by OTR investors and had been a significant factor in their 1980's and 1990's decisions to become OTR investors. Along with others, both inside and outside of the Exchange, OTR investors had recognized the inevitability of the Exchange's imperative to be a one-stop market in order to realize its goal of continued dominance in an expanding world marketplace. It came as little surprise then, when two members of the 1997 NYSE senior management team signaled on separate occasions in 1997 what was interpreted as their impression of the Exchange's exit from the option business as being temporary. Even by that time, then, options were evolving into an integral component of the securities business.

Though both owners of full NYSE and NYSE (EX-OTR) memberships swapped their equity positions and trading licenses in the Exchange for NYX stock in 2006, the trading licenses of separated OTR investors continue to exist unredeemed. Indeed, their appreciating value from rapidly accumulating but undistributed NYSE/ARCA option trading license revenues as well as their expanding option universe due to the Exchange's proposed and yet-to-be-proposed domestic and foreign option market combinations (Euronext, India, etc.) have yielded a substantial increase in worth.* In anticipation of the Exchange's inevitable reentry into the option business, OTR investors held onto their OTR investments. From the NYSE 1997 prerequisite that OTR investors surrender their OTR's (a stipulation not asked of full seat owners), the investors' formal SEC-registered objection to that prerequisite, and the eventual NYSE withdrawal of the requirement; to the choice of most to not offer their OTR's on the official NYSE-posted membership market, OTR investors held their positions.

* A fair way of determining their values is to form a comparison with other U.S. option exchanges. Monthly rental for CBOE or AMEX option seats, for example, are to their posted seat prices as monthly revenues of NYSE/ARCA options trading licenses, plus monthly revenue from all Euronext options plus monthly revenue from 5% of India's options plus monthly revenue from with whatever other options market the NYSE forms a combination are to X. The addition of accumulating lease revenues from option trading licenses of exchanges that have already merged should then be included.

NOT CITED IN ORDER GRANTING APPROVAL

In its February 27, 2006 "Order Granting Approval of Proposed Rule Change ….Relating to the NYSE's Business Combination with Archipelago Holdings, Inc.", it is important to note which aspects of the original December 23, 2005 comments from OTR investors (http://www.sec.gov/rules/sro/nyse/nyse200577/cl122305.pdf) and the subsequent February 12, 2006 reply-to-response that the SEC did not cite to support its order (http://www.sec.gov/rules/sro/nyse/nyse200577/arothlein021206.pdf) approving the combination and the Exchange's non-recognition position of separated OTR investors.

Firstly it did not cite the NYSE's 1997 application to the SEC (SR-NYSE 97-05, Article 3(A) vi) that OTR investors surrender their rights, the subsequent submission of opposing comment letters to the SEC, and the NYSE's April 21, 1997 withdrawal thereof.

Secondly not cited by the SEC was the NYSE's description of OTR's as defined by who held them. When OTR's were held separately by investors, they assumed a 1997 cognomen of "without possible future benefits". When they were held by owners of full seats, whether they had participated in the CBOE lease pool or not, they were assigned no such designation by the Exchange.

Thirdly not listed by the SEC was the NYSE's maintenance of its option exchange registration even after its exit from the option business. If it was the Exchange's intention to maintain its SEC-option-license in the event it reentered the business and wanted to be permitted full participation, a similar position by OTR investors and OTR's is no less valid.

Fourthly not referenced by the SEC was the NYSE's insistence in its 1997 transfer agreement with the CBOE that it be allowed to reenter the option business at will. Again if the NYSE was covering its bases in a "just in case" scenario regarding reentry into the option business, the position of OTR investors who maintained their ownership is no less valid.

Fifthly not cited by the SEC in its order granting approval for the NYSE/ARCA combination and the NYSE's non-recognition position of separated OTR investors, was the Exchange's uninterrupted (from 1983 until the present) maintenance of rules by which to effect option trades under its auspices. How permanent an exit of the option business was the Exchange intending to achieve if it continued its option rules and option exchange registration?

Sixthly the SEC did not list as a supporting mainstay of its order the theoretical expropriation of separated OTR's to NYSE (EX-OTR) owners, a 2005 mechanism developed by Exchange management and described in the December 23, 2005 OTR comment letter.

Finally not presented to support its approval order was the NYSE's February 7, 2006 response-to-comment assertion that since,
"There will be neither physical entry upon the NYSE Market's trading floor to trade options nor any options admitted to dealing on the NYSE Market. Thus, none of the operative conditions of an OTR is met."
As noted in the February 12, 2006 reply-to response comment, admission to the trading floor was considered the highest access available to the NYSE options market at the time. Technological advances or business combinations since then have only served to alter what is deemed the highest access but does not degrade OTR licenses from that same level of access in its most current form. Also, whether options are traded on the NYSE Market, NYSE/ARCA, Euronext, the National Exchange of India, or any other NYSE owned and/or associated entity, the fact remains that an implied contract was created between NYSE-issued Option Trading Rights investors and whatever the NYSE Goup/Market/Regulation called itself in the 1980's; and no amount of creative metamorphosis is going to change that.

CITED IN ORDER GRANTING APPROVAL

What the SEC did cite to support its February 27, 2006 order is:

a) "It has been over eight years since the NYSE operated an option business."
b) "…. finds it consistent with Section 6(b)(1) of the Act and the NYSE rules for the NYSE to eliminate its rules that provide for options trading rights."
c) "nothing in the Act compels the NYSE to continue to trade a particular product line and the NYSE was free to terminate its options business entirely (in which case OTR holders would not have received any lease payments)."

With regard to (a) "over eight years", the question arises whether Exchange actually exited the option business or because of the described steps that it took can really be considered to have not done so. In either case, however, the Exchange's having taken all the proper actions to allow itself reentry from the time of its "exit", render the "eight year period" irrelevant.

With respect to (b) Section 6(b)(1) of the Act, it is specifically worded:
"Such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2)) to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange.

Since investing in NYSE Option Trading Rights was open to the general public, a more appropriate section for the SEC to have cited may have been, Section 6(b)(5) of the Act which states:
"The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to PROMOTE JUST AND EQUITABLE PRINCIPLES OF TRADE, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a FREE AND OPEN MARKET and a national market system, and, in general, to PROTECT INVESTORS and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.
The prospect of a company's attempt to legislate an asset in itself out of being is the inverse of just and equitable practices of trade, a free and open market, and an environment where investors are protected. But the prospect of the premier self regulatory organization conducting business as such, presents as noticeably paradoxical. Investors in NYSE OTR's continue then, to own New York Stock Exchange Option Trading Rights, the Exchange's recent disavowal of their existence notwithstanding.

That the NYSE (c) cannot be compelled to "trade a particular product line" is accepted. There is a difference, however, between not trading a particular line (options) and leaving the business entirely. As stated, the Exchange's maintenance of its SEC-option-exchange registration, as well as its option trading rules; and its insistence on being lawfully authorized to operate an options market at will, reveal an exchange that had not really terminated its options business. Moreover holders of NYSE Option Trading Rights were

investors in the fusion of the growing option industry and the NYSE name and were not, as they so expressed in 1997 and later, going to be pacified by the proceeds from a temporary lease pool, despite the freedom of the Exchange "to terminate its options business entirely (in which case OTR holders would not have received any lease payments)".

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CONCLUSION

As it was not the purpose of the December 23, 2005 and February 12, 2006 OTR comments to oppose the NYSE/ARCA combination, it is not the purpose of this comment to oppose the NYSE/Euronext combination. On the contrary, exchange consolidation with the NYSE as a dominant survivor is in the interests of OTR investors and has long been recognized as both important to the industry and inevitable. The SEC is asked, however, now that the Exchange has reawakened into option market operation after an interim dormancy, to judge this case as would a high court and then to necessarily affirm the implied contract into which the Exchange entered with its OTR investors and the resultant position of unredeemed NYSE Option Trading Rights, per terms of that contract, as legal trading licenses of all NYSE option products.

Respectfully,

Andrew Rothlein