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Assistant Secretary

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November 2, 2006

Nancy M. Morris, Esq.
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: SR-NYSE-2006-65 – Response to Comment Letters (“Response”)

Dear Ms. Morris:

The New York Stock Exchange (the “Exchange” or “NYSE”) is writing to respond to two letters (2) letters¹ submitted in response to the Securities and Exchange Commission’s (the “Commission” or “SEC”) solicitation of comments in connection with SR-NYSE-2006-65 and Amendment Nos. 1, 2 and 3 thereto (“the NYSE Omnibus filing”).²

Many of the comments raised in the letters relate to rule changes proposed in other NYSE filings which have already been approved by the SEC, including SR-NYSE-2004-05 (“Hybrid Market”) ³ and SR-NYSE-2005-36 (NYSE d-Quotes)⁴. Other comments focus on non-substantive issues. Accordingly, this letter responds only to substantive comments on proposals included in SR-NYSE-2006-65.

¹ See letters from George Rutherford, Consultant, dated September 10, 2006 (“Rutherford Letter”) and Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated October 3, 2006 (“Peake Letter”).

² See proposed rule filing and all corresponding amendments, Securities Exchange Act Release No. 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (SR-NYSE-2006-65).

³ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

⁴ See Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (SR-NYSE-2006-36).

Background

Since the approval of the Hybrid Market, the Exchange has continued to discuss Hybrid Market features with its customers, members and advisory committees. Based on those discussions, the Exchange proposed changes to certain aspects of the Hybrid Market to produce a trading venue that best addressed the various needs of our customers and members. Those proposed changes were incorporated into the “Omnibus filing” which is the subject of the comment letters referenced above.

The Omnibus Filing, so-called because it covers a number of different topics, amends NYSE Rules to clarify the definitions of certain terms and the systemic processing of certain orders or functions in the NYSE Hybrid Market and to update the Hybrid Market implementation schedule. The proposed rule changes are intended to promote a faster, more electronic market and a more efficient auction market and are reflective of the way in which our customers’ desire to trade.

As noted above, much of the letters address market structure issues general to the way in which the Exchange conducts business and, as such, are not specific to any of the amendments set forth in the subject filing. For example, the letters question the Exchange’s operation of an agency auction market whereby Floor brokers representing customer orders compete with customer orders entered directly on the Exchange via NYSE SuperDot[®] (“Dot orders”) and specialist proprietary interest. One of the commenters⁵ raises this topic in virtually all of his letters regarding NYSE rule filings, notwithstanding the fact that the federal securities laws endorse and encourage the existence of multiple market centers operating different trading models given the beneficial effects such competition provides.

Interestingly, the same commenter⁶ then challenges what he (erroneously) views is the elimination of the very auction model he objected to in his letter just paragraphs before. The auction simply operates electronically most of the time. Orders are still executed at the best price available, which is determined based on interest expressed electronically in the system rather than verbally. Moreover, the opportunity for orders to participate in a manual auction – should they want or need to – continues to exist on the Exchange. First, customers can enter their order with a Floor broker, who is obligated to obtain the best execution possible for such order, which includes a manual execution, if appropriate. Second, market conditions in a security may require a manual auction, such as when there is a sudden influx of orders on one side of the market requiring a gapped quotation to identify an appropriate price or when a liquidity replenishment point has been reached. The increase in execution options on the NYSE has been lauded by customers and

⁵ See Rutherford Letter at pg. 1.

⁶ See Rutherford Letter at pg. 1-2.

constituents and indeed was required for the Exchange to be compliant with Regulation NMS.⁷ Rather than recognize this, it seems the commenter would have preferred the Exchange to become a museum exhibiting the quaint trading practices of previous centuries.

1. Comments Concerning Stop Order Amendments

The filing amends the way in which stop orders will be handled by Exchange systems, eliminating the knowledge specialists had of the size and election prices of these orders. A commenter acknowledges that the NYSE's proposed amendments appropriately address the conflict of interest that resulted from the specialist's access to this information.⁸ However, the commenter then suggests (erroneously) that amendments somehow confer on the specialist an exclusive right to trade with stop orders once they are elected. Nothing in the filing even remotely suggests that the specialist, or indeed any NYSE market participant, has an exclusive right to interact with stop orders.

As with his other remarks on this filing, the commenter is merely repeating objections he previously made to the way in which the Hybrid Market operates generally. Thus, the commenter uses the admittedly laudable changes to stop order processing to object to the specialists' ability to maintain algorithmic systems with access to incoming orders, which was approved by the Commission in SR-NYSE-2004-05.⁹ More importantly, the commenter completely ignores the trading competition provided by Discretionary e-Quotes ("d-Quotes"), which are being implemented with respect to market orders and marketable limit orders in Phase III of the Hybrid Market.¹⁰

Similarly, the commenter uses the proposed rule change to complain about "hidden" pools of liquidity¹¹ which is a concept approved by the SEC and available on every market center.¹² Nevertheless, it is important to note that the function of e-Quotes, d-

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005) 17 CFR.242.600(b)(3).

⁸ See Rutherford Letter at pg. 3.

⁹ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

¹⁰ Implementation of Phase III of the Hybrid Market began on October 6, 2006.

¹¹ See Rutherford Letter at pg. 6.

¹² The ability of Floor brokers to maintain reserve interest was approved by the Commission as part of the Hybrid Market filings and this proposal introduces no changes to the reserve functionality already approved. Accordingly, this

Quotes and algorithmic trading in the Hybrid Market is consistent with other market centers that permit non-displayed interest to interact with orders. Generally, these “hidden” order rules have been approved by the SEC in response to the preference of market participants for anonymity, and in spite of arguments like the one made by the commenter that hidden orders are detrimental to other market participants.

Accordingly, the proposed amendments to the way in which stop orders are processed neither exacerbates nor causes specialists to have any additional trading privileges than they currently have; in fact, by eliminating the specialist’s knowledge of information about these orders, the amendments create a more even playing field for participants in the Hybrid Market. Indeed, as the commenter acknowledges, the proposed rule clearly reduces the possibility of specialists having a trading advantage or a conflict of interest under the provisions of the proposed rule.

The same commenter argues against the proposed elimination of the price “guarantee” required of the specialist when he or she is party to the election of stop orders, notwithstanding the fact that the reason for the “guarantee” no longer exists.¹³ Again, he uses this admittedly reasonable proposal as providing license to complain about specialist trading generally. While the Exchange has previously responded to similar comments about specialist trading, particularly in connection with their affirmative and negative obligations in the Hybrid Market, it is important to address the NYSE’s proposed elimination of the specialist’s price “guarantee” for elected stop orders.

Currently, Exchange Rule 123A.40 requires the specialist to guarantee that elected stop orders receive the same price as the electing sale under certain conditions: specifically, if the specialist was party to the election of such stop order and his or her bid (offer) had the effect of improving the market or was part of an electing transaction that was more than 0.10 cents away from the prior transaction price. This rule takes into consideration the fact that specialists have the ability to view the electing prices and sizes of all stop orders in the stock; information that is not generally available to other market participants. Requiring the specialist to guarantee the price at which these orders are executed in the circumstances prescribed by Rule 123A.40 removes any incentive on the part of the specialist to effect proprietary trades that would inappropriately elect stop orders.

Therefore, as discussed above, under the proposed amendments, specialists will no longer

Response will not focus on issues related to reserve interest, other than to point out that the existence of reserve interest is not new or unique to the Exchange and is consistent with that available on other markets. Indeed, all electronic order books have reserve functionality at all price levels (See, e.g., Securities Exchange Act Release No. 46410 (August 23, 2002), 67 FR 55897 (August 30, 2002) (NASDAQ SuperMontage Filing).

¹³

See Rutherford Letter at pg. 3.

have access to electing price and size information for stop orders. Thus, the reason for the price guarantee required by Rule 123A.40 no longer exists and it should be eliminated.

2. Comments Concerning Amendments to “Sweeps”

While supporting the proposed sweep amendments as beneficial to the “trade initiator,”¹⁴ one commenter again uses this change as a platform to raise objections to a fundamental aspect of the NYSE’s market structure regarding the parity of orders represented by Floor brokers with Dot orders. As this filing proposes no changes to Exchange parity rules, and any parity implications involving sweeps were addressed in the Hybrid Market filings, this comment will not be addressed further.¹⁵

3. Comments Concerning the Ability of All Market Participants to Use e-Quotes, d-Quotes and Algorithms.

One commenter suggests that all market participants should have the ability to use e-Quotes, d-Quotes and algorithmic trading.¹⁶ First, Exchange rules do not prevent market participants from employing algorithmic-based trading strategies in connection with round-lot trading. Second, the availability of e-Quotes and d-Quotes to Floor brokers was addressed in connection with the Hybrid Market and d-Quotes filings. As with most of the comments raised in his colleague’s letter, this point relates to general market structure issues rather than any of the particular amendments proposed in the subject filing.

Needless to say, the Hybrid Market provides all market participants with the ability to electronically enter their orders, and does not deny access to the market to any participant. All customers are able to benefit from the use of e-Quotes and d-Quotes via their Floor brokers and can chose to employ algorithms by building their own algorithmic functionalities or subscribing to services that provide them. All orders entered on the Exchange will be executed, consistent with their instructions, in accordance with Exchange rules. No class of customers is advantaged or disadvantaged by these rules. Moreover, public customers are not subject to the legal requirements that Floor brokers and specialists are subject to and may choose to quote or trade in a manner that is strategically beneficial to them without regard for the rest of the market.

¹⁴ See Rutherford Letter at pg. 5, 6 and 7.

¹⁵ While this filing proposes certain changes to Rule 123A.30(a), which governs CAP-DI orders, they are ministerial in nature, to clarify the language and conform it to the new sweep definition. The amendments do not change the way in which CAP-DI orders trade.

¹⁶ See Peake Letter at pg. 1 and 2.

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Lastly, while not relevant to the subject filing, this commenter again raises an issue about the use of the term “discretion” in connection with electronic orders.¹⁷ A complete reading of SR-NYSE-2006-36,¹⁸ shows that the “discretion” permitted relates to the Floor broker’s decisions as to how he or she will represent his or her customer’s order, consistent with the customer’s instructions. These decisions are then reflected electronically via the d-Quote.

* * *

If you have any questions regarding the foregoing, please feel free to contact Nancy Reich, Vice President, Office of the General Counsel, at (212) 656-2475, Deanna Logan, Director, Office of the General Counsel, at (212) 656-2389, and Jean Walsh, Principal Rule Counsel, Office of the General Counsel at (212) 656-4931.

Sincerely yours,

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

Mary Yeager
Assistant Secretary

¹⁷ See Peake Letter Re: SR-NYSE-2006-36 (NYSE d-Quotes) dated August 18, 2006.

¹⁸ See Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (SR-NYSE-2006-36).