



June 21, 2007

**VIA ELECTRONIC DELIVERY**

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
Station Place  
100 F Street, NE  
Washington, DC 20549-1090

**RE: Proposed Changes to NYSE Rule 92 (File Number SR-NYSE-2007-21)**

Dear Ms. Morris:

Citigroup Global Markets Inc.<sup>1</sup> (“CGMI” or the “Firm”) is pleased to respond to the proposed changes by the New York Stock Exchange (“NYSE” or the “Exchange”) to its Rule 92 re: Limitations on Members’ Trading Because of Customers’ Orders (the “Proposal”). CGMI supports the Proposal, subject to our comments below, but encourages the NYSE to take further steps to harmonize its Rule 92 with similar rules of the National Association of Securities Dealers (“NASD”) and to address the changes to the marketplace because of the implementation of NYSE’s Hybrid Market and Regulation NMS (“Reg NMS”).

CGMI participated, through the Securities Industry Financial Markets Association (“SIFMA”), in a conference call on March 30, 2007 with the Exchange and several other member firms (the “March 30<sup>th</sup> Conference Call”), in which the NYSE’s original rule proposal was discussed. CGMI also participated in the subsequent preparation of a letter by SIFMA regarding the Proposal’s application to the equity markets generally (the “SIFMA Letter”). We generally support the analysis and views set forth in the SIFMA Letter, but are writing separately to highlight additional comments with regard to the issues below.

The Proposal would permit members or member organizations to trade a proprietary order ahead of a customer order if the purpose of the proprietary order is to execute, on a riskless principal basis, another order from a customer. It would also permit member organizations to combine multiple orders into a single order and to route the order to the Display Book® for execution on a riskless principal basis via Exchange execution systems.

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<sup>1</sup> Citigroup Inc. is a diversified global financial services holding company whose businesses provide a broad range of financial services to consumer and corporate clients as well as governments and other institutions. Citigroup has some 200 million client accounts and does business in more than 100 countries. Citigroup’s primary U.S. broker-dealer subsidiary, Citigroup Global Markets Inc., is registered as a broker-dealer in all 50 states, the District of Columbia, Puerto Rico, Taiwan and Guam, and is also a primary dealer in U.S. Treasury securities and a member of the principal United States futures exchanges. Additional information may be found at [www.citigroup.com](http://www.citigroup.com) or [www.citi.com](http://www.citi.com).

### *Removing the Customer Facilitation Limitation*

CGMI applauds the NYSE for seeking consistency with the NASD's "Manning Rule", which permits riskless principal orders as an exception to the rule prohibiting trading ahead of customer market and limit orders on the NASDAQ market.<sup>2</sup> However, we encourage the Exchange and the Commission to further harmonize Rule 92 with the NASD's Manning Rule. Under Rule 92, member firms may receive consent to trade along with customer orders only when liquidating or hedging principal positions acquired in the course of facilitating customer orders and held in a specialized customer facilitation account. This limits broker-dealers' ability to manage risk when they build a position in anticipation of customer demand or hedge one stock with another. In the context of derivatives, broker-dealers often hedge a book of derivatives that may or may not be closely tied to a specific customer facilitation transaction. For these reasons, we urge the Exchange and the Commission to consider allowing member organizations to trade alongside of a customer order regardless of whether the specific purpose of the proprietary order is the direct liquidation or hedge of a customer facilitation position. Eliminating these Rule 92 limitations would accomplish two main objectives: (i) it would alleviate the issues with allocation of the underlying orders which would otherwise exist if a single order is transmitted to the Exchange including both riskless and risk elements (and thus would not be a pure riskless principal transaction); and (ii) it would increase liquidity in the marketplace, leading to more efficient markets and thus better serving the needs of investors.

While we believe the Exchange should abolish the limitation that a firm may trade alongside of a customer order only when facilitating customer orders (as described above), we agree with the Exchange that disclosure and consent requirements should be retained in such instances. We believe those disclosure and consent requirements should be as we propose below. In the event that the Exchange determines to retain the customer facilitation limitation, we respectfully request the following changes to the Proposal.

### *Riskless Principal Transactions / FESC Reporting*

The Exchange did not respond to some concerns raised by member firms on the March 30<sup>th</sup> Conference Call regarding the requirement that firms submit order execution reports to the Exchange's Front End Systemic Capture ("FESC") database. The Proposal suggests that firms must mark the initial leg of the riskless principal transaction as riskless when the order is sent to the NYSE, as opposed to submitting a principal order to the Exchange and a separate non-tape, non-clearing report on the second leg of the transaction to the client (which is the NASD's alternative approach to riskless principal trade reporting). Our firm, and we believe most other firms, currently reports riskless principal transactions using the NASD's alternative approach. The Proposal would therefore involve costly and time-consuming systemic changes among most member firms (especially those firms of our size with extremely complex systems) at a time when resources have already been stretched due to Reg NMS and other compliance efforts.

In addition, the Proposal suggests that, when executing a riskless principal order on the Exchange, firms must submit execution reports to FESC linking the original riskless principal order with the underlying customer orders. Linking the riskless orders in FESC could prove problematic, and member firms would need more detail as to the time period in which the NYSE would expect them to send drop copies into FESC and how this would be accomplished. It is

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<sup>2</sup> See NASD Rule 2111 and IM-2110-2.

unclear whether this information would be required at the time of the order submission or after execution (in any event, upstairs trading activity is not currently reported to FESC). This is complicated by the fact that, in a Reg NMS world, one large order may be sent in pieces to the NYSE (and many other destinations) several different times. Additionally, it is unclear what a member firm's obligations would be if the allocation information changes post-execution.

We are particularly troubled by the proposed Rule 92 trade reporting requirements given that, in addition to the costly systems requirements they would precipitate, as well as the ambiguity surrounding how and in what time period certain trades should be reported, the proposed trade reporting requirements are duplicative of existing requirements. Specifically, no additional trade reporting should be required, since this information would be available to the Exchange if it were to make an OTS and OATS request. Yet another alternative would be coordination between the NYSE and NASD with regard to OTS and OATS reporting to receive this level of order information.

If the Exchange is unwilling to eliminate the proposed trade reporting requirements, then at a minimum, we believe the NYSE should permit riskless principal trade reporting in the alternative manner allowed by NASD rules<sup>3</sup> by allowing principal trades to be reported to the Exchange along with a separate non-tape, non-clearing report on the second leg of the trade. This would be in accord with the riskless principal trade reporting practices of many firms, including CGMI. In addition, should the NYSE require submission of allocation reports to FESC linking the original riskless principal order with the underlying customer allocations, the NYSE should confirm that an end-of-day drop copy of Rule 92 riskless principal transactions will meet the proposed requirement.

#### *Customer Consent under Rule 92(b)*

The Proposal would expand the consent provisions for trading ahead or alongside of a customer order and change the notification and consent provision of Rule 92(b) to permit customers to provide affirmative blanket consent, subject to certain requirements. This is a modification of the current requirement that members and member organizations obtain and document consent for members to trade along with customer orders on an order-by-order basis. Again, CGMI applauds the NYSE for this modification to its Rule 92; however, we encourage the Exchange and the Commission to consider further measures to harmonize Rule 92 with similar rules of the NASD.

For the reasons set forth in the SIFMA Letter, CGMI agrees with SIFMA that negative consent with affirmative disclosure for institutional and individual customers would better align the NYSE's requirements with market practice and would more effectively mitigate the administrative and recordkeeping burdens related to providing adequate customer disclosure. As noted in the SIFMA Letter, there are several analogous precedents from both the Exchange as well as the NASD for adopting this approach.

#### *Exemption for Reg NMS-Compliant Intermarket Sweep Orders ("ISOs")*

Finally, the Proposal would add an additional exemption to Rule 92 to permit a member firm in certain situations to enter Reg NMS intermarket sweep orders ("ISOs") at the Exchange,

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<sup>3</sup> See, e.g., NASD Rule 4632(d)(3)(B).

subject to certain conditions, including that the firm yield its principal executions to any open customer orders that are required to be protected by Rule 92. The proposed exemption would require that, if a firm executes an ISO to facilitate a customer order at a price inferior to one or more protected quotations, that customer must consent to not receiving the better price obtained by the ISO, or the firm must yield its principal executions to the customer.

The Proposal remains unclear as to the operation of the proposed ISO facilitation exception, both with respect to the customer order that is the subject of the facilitation trade, and with regard to other customer orders that may be held by a firm at the time of the ISO facilitation trade. More troubling is the impracticality of a firm's having to allocate principal ISOs to non-consenting customers where the main customer has consented to not receiving the benefit of any more advantageously-priced ISOs. We appreciate the similarities to the NASD's Manning Rule, but are concerned about the feasibility of accomplishing the task. Of course, this practical difficulty can be eliminated if the Exchange was to adopt the position we advocated above, i.e., that member organizations should be permitted to trade alongside of a customer order regardless of whether the specific purpose of the proprietary order is the direct liquidation or hedge of a customer facilitation position. We believe this would increase liquidity in the marketplace, lead to more efficient markets and thus better serving the needs of investors.

#### *Allocation*

For the reasons set forth by SIFMA in the SIFMA Letter, we wish to support the position contained in Section III (Allocation) therein, specifically that the Proposal should be clarified to state that the orders of customers who have consented to trading along are not required to yield to the orders of customers who have not or cannot consent.

In conclusion, CGMI believes the NYSE has only partially harmonized its Rule 92 with similar rules of the NASD, and would like to encourage the Exchange and the Commission to take further measures to promote more efficient markets and thus better serve the needs of investors. Please feel free to contact me at (212) 723-7560 with any questions you may have. We appreciate the opportunity to comment on this rule filing and look forward to further discussion of the matter.

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Sincerely,

/s/ Bret Engelkemier

Bret Engelkemier  
Managing Director, Head of Equity Trading