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

Re: Response to Comments on SR-NYSE-2007-21 regarding Rule 92 ("Limitations on Members' Trading Because of Customers' Orders")

Dear Ms. Morris:

The New York Stock Exchange, LLC ("NYSE" or the "Exchange") submits this letter to respond to comments by the Securities Industry and Financial Markets Association ("SIFMA") and Citigroup Global Markets Inc. ("CGMI"), which were made in response to the Securities and Exchange Commission's (the "Commission") solicitation of comments in Securities Exchange Act ("Exchange Act") Release No. 34-55804 (May 23, 2007), 72 FR 30410 (May 31, 2007), on the above-captioned filing. That filing, as amended on May 23, 2007, proposed to amend NYSE Rule 92 to permit riskless principal transactions, amend the consent requirements under NYSE Rule 92(b), and provide an exemption from NYSE Rule 92 so that firms can comply with certain Regulation NMS ("Reg NMS") requirements (the "proposed filing").

Overall, both SIFMA and CGMI expressed their support for the proposed filing, which the Exchange appreciates. Nonetheless, both have provided comments on specific aspects of the filing for which they request that the proposed filing be revised or reconsidered. The following is a summary of those comments:

1. Affirmative Consent: Both SIFMA and CGMI object to the Exchange's proposal to replace its current NYSE Rule 92(b) order-by-order consent procedures with affirmative consent and instead would like the Exchange to require only negative consent;

2. Transaction Reporting: Both SIFMA and CGMI would like the Exchange to change its transaction reporting requirements for riskless principal transactions by adopting reporting processes used by NASD;

3. Allocation Procedures for Riskless Principal Transactions: Both SIFMA and CGMI note that the allocation procedures for riskless principal transactions

should be reconsidered so that customers that have consented pursuant to NYSE Rule 92(b) do not have to yield to non-consenting customers;

4. Clarification on ISO Exemption: Both SIFMA and CGMI seek further clarification concerning proposed NYSE Rule 92(d)(5), which provides an exemption for Reg NMS-compliant Intermarket Sweep Orders ("ISOs"); and

5. Further Harmonization with the Manning Rule: CGMI encourages the Exchange to use this rule filing to further harmonize NYSE Rule 92 with NASD's Manning Rule, including 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.

With the exception of the third issue above relating to allocation procedures, the Exchange respectfully submits that the Commission should disregard the comments and approve the proposed filing in its current form. The Exchange submits the following in support of its position.

1. Affirmative Consent under NYSE Rule 92(b)

Currently, Rule 92 requires that before a firm can enter a proprietary order pursuant to Rule 92(b) that could be executed at the same price as a customer order, the firm must obtain order-by-order consent from the customer that documents that the customer has an understanding of the relative price and size of allocated execution reports. The rule currently limits such consent procedures to institutional investors with orders over 10,000 shares in size.

The Exchange recognizes that in the current fast-paced marketplace, obtaining order-by-order consent is not necessarily feasible. Moreover, the Exchange recognizes that sophisticated individual investors have the market savvy to provide consent under NYSE Rule 92(b). In response to these marketplace changes, in the proposed filing, the Exchange proposed liberalizing its consent procedures under NYSE Rule 92(b) in two material aspects. First, to harmonize with the Manning Rule, the Exchange proposes expanding the class of customers that can provide consent under Rule 92(b) to both institutional investors with orders of any size and individual investors with orders over 10,000 shares, unless such orders are less than $100,000 in value.

Second, and at issue in the comment letters, the Exchange proposes expanding the consent procedures by permitting firms to obtain a one-time affirmative consent from eligible customers, rather than order-by-order consent. Under the proposed affirmative consent procedures, member organizations would be required to provide written disclosures to its customers concerning its NYSE Rule 92(b) procedures, including any applicable allocation procedures and notice that a customer can opt out on an order-by-order basis. Once such disclosures have been provided, a member organization can obtain affirmative consent in one of two ways: (1) a writing from the customer documenting such affirmative consent; or (2) oral consent from the customer, provided that the member organization provides written notice to the customer documenting that oral consent. So long as member organizations periodically continue to provide written disclosures to customers documenting its NYSE Rule 92(b) procedures, firms would not have to obtain additional written affirmative consent from customers.

Both SIFMA and CGMI contend that NASD's Manning Rule requires that firms only obtain negative consent from customers before trading along with those customer orders.[1] The Exchange notes, however, that the Manning Rule does not have specific consent procedures because by its terms, the rule automatically applies to not-held orders for which trade along is permitted under that rule. Rather, the negative consent procedures that SIFMA discuss relates to net trading based on NASD Notice to Members 99-66, which trading situations are inapplicable at the Exchange. In addition, SIFMA notes that the Exchange's proposal would cause administrative and recordkeeping burdens on the firms, but does not specify what such burdens would be. Moreover, neither SIFMA nor CGMI have made clear how the Exchange's proposed affirmative consent procedure would be more burdensome than the existing consent procedures.

While the Exchange is sensitive that its rules should not impose unnecessary burdens on its member organizations, at the same time, the Exchange is committed to ensuring investor protection. The Exchange believes that the proposed procedure for affirmative consent strikes the correct balance between the need for investor protection, which was more fully met with the order-by-order consent procedure, and the need to relieve unnecessary administrative burdens on member organizations.

Accordingly, the Exchange respectfully requests that the Commission reject the recommendations concerning negative consent as expressed in the two comment letters. At the same time, the Exchange recognizes that obtaining affirmative consent is not an instantaneous process, and therefore is amending the purpose section of its filing to propose to give firms until September 30, 2007 to obtain documentation of the affirmative consent. To the extent that the firms obtain oral consent prior to that date, they would be permitted to trade on a riskless principal basis with such customers, subject to documenting the consent by September 30, 2007.

2. <u>Transaction Reporting</u>

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[1] The Exchange notes that in prior conversations with SIFMA, certain member organizations have agreed that affirmative consent procedures would be appropriate for individual investors and have proposed that negative consent procedures be used with institutional investors only.

In compliance with existing Exchange transaction reporting systems, the Exchange proposes that member organizations report the initial leg of a riskless principal transaction using the audit trail account type "R" (for riskless principal) and then submit order execution reports linking the execution of the riskless principal order to the specific underlying orders to the Exchange's Front End Systemic Capture system ("FESC"). Such reporting requirements would meet existing Exchange rules for records of orders as set forth in NYSE Rules 123(e) and 123(f) as well as the order tracking requirements as set forth in NYSE Rule 132B. The Exchange notes that it developed this process for reporting riskless principal transactions based on recommendations from certain SIFMA members.

Both SIFMA and CGMI argue that the reporting requirements would impose new obligations on firms that are more burdensome than procedures they use when reporting riskless principal transactions to NASD. They note that NASD offers an "alternative" approach whereby the firm can submit a riskless principal order as "principal" and then submit a separate non-tape, non-clearing report on the second leg of the riskless principal transaction via an NASD trade reporting facility ("TRF"). CGMI also proposes that the Exchange pull information regarding riskless principal transactions from NASD OATS system.

While the Exchange is developing a proprietary TRF, the Exchange notes that in order for firms to be in compliance with NYSE Rules 123 and 132B, such orders must be submitted as "riskless" with a drop copy of the allocation reports to FESC; there is no other feasible alternative: the Exchange does not have a TRF capable of receiving riskless principal orders nor does its surveillance systems have access to NASD OATS data. Accordingly, while the Exchange recognizes that alternative procedures may be less burdensome for firms, such alternative procedures simply are not available in order for the Exchange to meet its regulatory obligations. The Exchange will continue to review its trade reporting requirements for riskless principal transactions.

However, in the meantime, if firms wish to avail themselves of riskless principal trading at the Exchange, they must follow the reporting requirements described by SIFMA as the "traditional" approach.

The Exchange notes that in footnote 11, SIFMA also objected to the 60-second allocation requirement of the proposed filing because such requirement would force the firms to allocate customer orders after each riskless principal transaction, rather than work a customer's order over the course of the day and provide an average price to the customer. The Exchange notes however, that the Manning Rule requires 60-second allocation to a customer from execution for both held and not-held orders. Moreover, if firms would like to provide average pricing to customers, firms must follow Exchange procedures for volume weighted average pricing ("VWAP") orders.

Finally, both SIFMA and CGMI request clarification regarding the timing of submitting allocation reports to FESC. In response to comments, the Exchange is amending the purpose section of its filing to propose a delay to January 16, 2008 of implementation of therequirement that firms provide batched end-of-day allocation reporting. Prior January 16, 2008, the Exchange will work with the member organizations to develop and implement the necessary changes to firms' systems and FESC to accommodate the enhanced reporting requirements contained in this rule proposal. For the same reasons, the Exchange will delay implementation of the requirement that firms utilize the riskless principal account type indicator. Given the potential impact on the Exchange's surveillance systems, the Exchange will require that as of the date that each firm implements riskless principal routing (i.e., July 9, 2007 forward), that the firm have in place systems and controls that allow them to easily match and tie riskless principal executions on the Exchange to the underlying order. The firm must be able to easily and readily construct this audit trail information for review by relevant examination staff.

3. Allocation Procedures for Riskless Principal Transactions

Both SIFMA and CGMI raise valid issues in connection with the Exchange's proposed allocation procedures for riskless principal transactions. As noted in both the comment letters, the proposed filing provides that when allocating riskless principal orders that include a Rule 92(b) proprietary order, customers that have provided consent pursuant to NYSE Rule 92(b) would be required to yield to non-consenting customers. The Exchange agrees with the comments raised relating to this procedure and are submitting to the Commission for accelerated approval a partial amendment to the proposed filing that would change such allocation procedures to ensure that no customer would be required to yield to another customer, subject to regular parity of order requirements.

4. ISO Exemption

Both SIFMA and CGMI raise questions regarding proposed NYSE Rule 92(d)(5), which provides an exemption from NYSE Rule 92 for firms complying with requirements under Reg. NMS to route ISOs when facilitating a customer order. SIFMA, the Exchange, and the Commission participated in a conference call on June 28, 2007, to clarify the issue raised by SIFMA.

The purpose of the proposed exemption is simple: if a member firm is facilitating a customer order by routing such order to a specific automated trading center at a price inferior to protected bids and offers, pursuant to Reg. NMS, the member firm is required to route ISOs to trade with those protected bids and offers in the other automated trading centers. If using a principal transaction to route such ISOs, a member firm may be forced into a situation in which it is trading ahead of existing customer orders that could be filled at those ISO prices. Accordingly, the Exchange proposes adding the exemption to permit member organizations to route such Reg. NMS ISOs, regardless of any existing unexecuted customer orders that could be filled at the ISO price, so long as the firms yield the execution of those ISO to such open customer orders.

Moreover, the exemption recognizes that the customer seeking such facilitation likely has consented to not receiving the better prices from the ISO executions. In such case, the firm would not have to yield its principal executions to the consenting customer.

Note that the ISO exemption under proposed NYSE Rule 92(d)(5) is separate and distinct from the proposed riskless principal amendments to NYSE Rule 92. Accordingly, SIFMA is incorrect that the proposed exemption would require firms allocate fills from riskless principal facilitation trades to open customer orders; only the principal ISOs routed in conjunction with a facilitating trade (whether riskless principal) or not, would be required to yield.

5. Further Harmonization with NASD's Manning Rule

In addition to the above comments, CGMI also requested that the Exchange seek further harmonization of NYSE Rule 92 with NASD's Manning Rule. In particular, CGMI requests that the Exchange expand the trading situations pursuant to NYSE Rule 92(b) for when a member firm can trade along with the customer's order. Specifically, CGMI requests that the Exchange expand the NYSE Rule 92(b) trade-along situations beyond only those trading situations where the purpose of the proprietary order is the direct liquidation or hedge of a customer facilitation position.

Because time is of the essence to get the proposed filing approved before the July 9, 2007 deadline for Reg. NMS compliance for member firms, the Exchange does not believe that the proposed filing is the proper vehicle for addressing the issue of expanding the NYSE Rule 92(b) trading limitations, as proposed by CGMI. The Exchange will continue to review NYSE Rule 92 to determine whether further harmonization with NASD's Manning Rule is warranted and, for CGMI's particular request, whether the expanded limitations is both feasible and legal under the Exchange Act.

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If you have any questions regarding the foregoing, please feel free to contact Daniel M. Labovitz, Managing Director, Market Surveillance, at (212) 656-2081, or Clare F. Saperstein, Director, Market Surveillance, at (212) 656-2355.

Sincerely,

Mary Yeager
Assistant Secretary

cc: Chairman Christopher Cox
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