

Mary Yeager  
Assistant Secretary

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November 30, 2007

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

Re: SR-NYSE-2007-92 – Response to Comment Letter (“Response”)

Dear Ms. Morris:

The New York Stock Exchange (the “Exchange” or “NYSE”) is writing to respond to a letter<sup>1</sup> submitted in response to the Securities and Exchange Commission’s (the “Commission” or “SEC”) solicitation of comments in connection with SR-NYSE-2007-92: the NYSE 19b-4 Rule Filing for Exchange Rules 104(b) and 123D (“Rule Filing”).<sup>2</sup>

The Rule Filing includes changes to two Exchange Rules: Rule 104(b): a rule that provides for specialists to enter electronic trading and quoting messages via the Specialist Application Programmed Interface (“SAPI”), and Rule 123D: a rule that codifies specialist obligations at openings and halts in trading, which, pursuant to the Rule Filing, codifies the specialist’s ability to open a security on a quote.

#### Purpose of the Rule Filing

The purpose of the Rule Filing is to provide the specialist with the ability to electronically open an assigned security on a quote rather than a trade when there is no matching trading interest at the opening. Until the Rule Filing was approved by the Commission for “immediate effectiveness,” on October 1, 2007, the specialist could only open a security on a quote manually. The implementation of the Hybrid Market<sup>3</sup> in 2006

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<sup>1</sup> See letter from Junius W. Peake, Montfort Distinguished Professor Emeritus of Finance, dated October 11, 2007 (“Peake Letter”).

<sup>2</sup> See proposed rule filing, Securities Exchange Act Release No. 56588 (October 1, 2007), 72 FR 57366 (October 9, 2007) (SR-NYSE-2007-92).

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

and 2007 necessitated the automation of certain specialist messaging and trading tools. Without such automated tools, the specialists would face increasing difficulties in meeting his or her affirmative and negative obligations. The ability to electronically open a security on a quote does no more than assist the specialist in complying with his or her affirmative obligations under Rule 123D in the current, increasingly electronic market.

Under Rule 123D, specialists are obligated to, among other things, open their assigned securities “as close to the opening bell as possible,” in a timely, fair and orderly manner; and “provide timely and impartial information at all phases of the opening process.”

The Exchange notes that when a specialist does not meet his or her Rule 123D obligations regarding the opening of securities, the following may occur: 1) the specialist may be subject to penalties including the removal of registered securities and suspension of trading privileges; 2) investors may miss the market due to a late opening, and 3) all market participants may be disadvantaged as late openings can act as a deterrent to attracting trading interest. As described above, such actual or potential consequences do not form the purpose or rationale for the Rule Filing as the Commenter seems to suggest.<sup>4</sup> The purpose and rationale of the proposed Rule Filing is to assist the specialist in complying with his or her obligations to provide a fair, timely and efficient opening process.

#### The Rule Filing Promotes Fair Competition

In his letter, the Commenter quotes a portion of the Rule Filing that describes the actual and potential consequences of untimely openings of securities on the Exchange suggesting that such matters are contrary to “fair competition” under Section 11a of the Securities Exchange Act.<sup>5</sup> Clearly the Commenter is “confused,” as he states in his letter, and misinterprets the Rule Filing’s effect on the current market. The Exchange believes that the Rule Filing is neither an impediment to fair competition nor inconsistent with Section 11a principles. In fact, as described in more detail below, the Rule Filing actually promotes fair competition in the current market.

Specifically, the Commenter asserts that the specialist’s ability to electronically open a security on a quote provides the specialists with an unfair trading advantage that other market makers do not have. This assertion is incorrect. It should be noted that NYSE Arca Market Makers (“MMs”) are permitted to electronically open equities and options on a quote pursuant to NYSE Arca Rules 7.23, 7.31(k)(1) and (2), 7.34(b)(1) and for options, Rule 6.37 (Obligations of Market Makers). The American Stock Exchange (“AMEX”) permits their specialists to electronically open a security on a quote when

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<sup>4</sup> See Peake Letter at page 1.

<sup>5</sup> See Peake Letter at pages 1 and 2.

there is no "pair-off" trade, bids, offers or orders in the AEMI Book pursuant to AMEX Rule 108 (b)(2)(d) (AEMI-One. Priority and Parity at Openings and Reopenings). The Rule Filing merely equalizes market making abilities across certain markets thus promoting fair competition in the market. Providing specialists with the ability to electronically open a security on a quote in today's increasingly electronic market is a necessary adaptation to the increasingly faster electronic market.

Lastly, the Commenter requests that the Commission "stop any attempts to reconstruct out-of-date systems."<sup>6</sup> This request is inconsistent with the overall spirit of the comment letter. On one hand the Commenter opposes the Exchange's efforts to modernize and automate the specialist's opening procedures, and on the other hand, the Commenter requests the Commission to stop the reconstruction of "out-of-date systems." These inconsistent positions are confusing and leave open the question of the Commenter's true position on the Rule Filing.

The proposed Rule Filing is intended to promote a faster, more electronic market and a more efficient opening process. The Exchange believes that the Rule Filing assists specialists in opening an assigned security in a timely, fair and orderly manner, allows specialists to compete in a market that is increasingly dominated by electronic trading and provides the customer with timely, competitive trading opportunities.

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If you have any questions regarding the foregoing, please feel free to contact Vivian A. Maese, Senior Vice President and Associate General Counsel, Office of the General Counsel, at (212) 656-2475, Jean Walsh, Senior Counsel, Office of the General Counsel, at (212) 656-4931 and Donald Siemer, Consultant, Office of the General Counsel, at (212) 656-6773.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary Yeager", with a stylized, flowing script.

Mary Yeager  
Assistant Secretary

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<sup>6</sup> See Peake Letter at page 2.