



Lime Brokerage LLC

Member NYSE, Nasdaq, FINRA, NFA, SIPC

November 7, 2008

Florence Harmon
Acting Secretary
Securities and Exchange Commission
Station Place 100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-NYSE-2008-71 and File No. SR-NYSE-2008-100

Dear Ms. Harmon:

As co-founder of Lime Brokerage LLC (“Lime”), a regulated broker dealer, I find myself in the rather unusual position of petitioning the SEC for more regulation. Lime Brokerage caters primarily to automated traders, and through my involvement with the Company, I have a good understanding of the issues and practices surrounding automated trading. Runaway order placement is the great risk with any automated trading system, as exemplified by the \$350 million loss incurred by Mizuho Securities on 12/8/05 on the Tokyo Stock Exchange - <http://www.nytimes.com/2005/12/21/business/worldbusiness/21glitch.html>. Proper circuit breakers are necessary in order to prevent an out of control trading program from exposing the financial system to a catastrophic risk. Historically, regulated brokerage firms have been required to check customer orders for adequate buying power before an order hits the market. However, the SEC has allowed decades-old safeguards and mandatory supervisory controls to fall by the wayside with its acceptance of a practice known as Sponsored Access.

Sponsored Access is a practice where entities such as hedge funds are permitted to submit orders directly to Exchanges, ECNs and other trading venues, a practice normally only permitted by broker-dealers registered pursuant to the Securities and Exchange Act of 1934. With a Sponsored Access arrangement, the unregistered and unregulated party entering the order directly to the Exchange or ATS does *not* submit the order through a registered broker dealer first. Therefore, the pre-trade compliance obligations, like the FINRA “affirmative determination” and compliance with the provisions of SEC Regulation SHO can only be done, if they are done at all, by the end customer, an unregulated entity that the SEC does not normally have jurisdiction over.

Lime Brokerage has spoken to the SEC about Sponsored Access, both informally and in writing, and we were disturbed at the lack of concern or appreciation of the risks of this practice. Computerized trading is here to stay, and computerized trading can be a benefit to the functioning of the markets. However, a sound regulatory framework that prevents out of control trading by computers is

necessary to insulate the markets and the public from the hazards that accompany computerized trading.

In the past decade, around the world, there have been numerous examples of multi-hundred million dollar losses caused by computers trading out of control. Luckily, in each case to date, a large brokerage firm was able to absorb the loss, and the market was insulated from the error. However, by removing the layer of checking done by broker dealers, Sponsored Access increases the risk of a catastrophic computer error.

Lime Brokerage LLC has previously submitted a comment letter to the SEC regarding the NYSE's amendment of NYSE Rule 123B on Sponsored Access, <http://sec.gov/comments/sr-nyse-2008-71/nyse200871.shtml>. This letter addresses a rather significant shortfall in the regulatory framework that permits non-regulated entities to police themselves: a process that should be statutorily prohibited immediately.

The practice of Sponsored Access is extremely troubling in a market environment that has been caused, at least in part, by financial entities policing themselves. Through the amendment, the NYSE continues to allow non-members of the New York Stock Exchange ("NYSE") direct access to the NYSE for the entry and execution of orders on the Exchange, a practice at direct odds with existing rules, and best practices. Historically, this practice has been confined to broker-dealers because the party entering the order is responsible for ensuring compliance with various SEC and self-regulatory organization rules and regulations such as FINRA's rules on Supervisory Controls and Affirmative Determination for sales, at a minimum.

The rule changes completely ignore an important layer of market protection. The NYSE would like to continue to allow hedge funds to be responsible for monitoring their own short sale checks, margin and leverage limits, and circuit breakers to prevent out of control trading. Sponsored Access is both bad public policy and contrary to existing rules. The practice of Sponsored Access is analogous to allowing airline passengers to screen their own baggage. If the SEC and FINRA deem certain practices significant enough to create rules like Regulation SHO and Emergency Order 204T, then permitting unregulated end-customers to self-police for compliance with these rules is inappropriate. According to the Securities and Exchange Act of 1934, the regulatory burden rests with the regulated entity and *not* the end customer.

The events of the last year have taught us that we need a proper regulatory framework to prevent market catastrophes, such as runaway computerized trading, naked shorting and excessive leverage. The past few years have seen a systematic weakening of the regulatory framework thus increasing the likelihood of these issues arising. The SEC and FINRA need to act to restore a robust regulatory structure to the US equity markets by properly enforcing the existing rules. The SEC and FINRA have ignored the issue of Sponsored Access for the past few years. I can only hope that the current financial crisis has shaken the SEC from its complacency.

In a financial crisis aggravated by a lack of regulatory oversight, the SEC would be foolhardy to permit a regulatory structure that allows customers to police themselves. Unregulated hedge funds operating with the same access and privileges as regulated brokerage firms opens a gap in proper trading oversight. Hedge funds are the wrong entities to prevent naked shorting and compliance with credit standards, like Regulation T and FINRA's margin rules. The SEC and FINRA have

November 7, 2008

outsourced, and at times completely abdicated, the enforcement of rules to hedge funds, and our most recent history has shown this to be dangerously inadequate.

Sponsored Access strips away important protections in an industry that is already being scrutinized for lack of oversight. Although the customers may be professional traders, they do not meet the same standards and assume the same obligations as registered broker-dealers whose systems and procedures are monitored to ensure that they are sufficient for the prudent operation of their business. As SEC Chairman Cox stated on September 26th "The last six months have made it abundantly clear that voluntary regulation doesn't work." Sponsored Access is voluntary regulation taken to the extreme: a practice that should be stopped. I only hope that it doesn't take a catastrophe in this area for the SEC and FINRA to address this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Gorton". The signature is written in a cursive, flowing style.

Mark Gorton
Chairman
Lime Brokerage LLC