From: Duncan Niederauer
Sent: Wednesday, October 08, 2008 3:31 PM
To: Casey, Kathleen; Walter, Elisse; aguilarl@sec.gov; Paredes, Troy A.
Cc: Cox, Christopher; Sirri, Erik R.
Subject: Update on new market model

Dear Commissioners Casey, Aguilar, Paredes and Walter:

I am aware that you should be receiving on your desk in the next day or two a series of filings concerning our new market model. With that in mind, I thought it was appropriate timing to provide a quick update on these filings and a bit of context.

Background

On June 11, 2008, the New York Stock Exchange ("NYSE") filed proposal SR-NYSE-2008-46 with the Securities and Exchange Commission ("SEC" or "Commission") that, taken together with other rules recently approved, implement a new market model for trading equity securities on the NYSE. The filing was the culmination of more than a year-long dialogue that the NYSE conducted with the constituencies that participate in our market (customers who initiate orders, Floor brokers and specialists) and the SEC. We had several meetings with the staff of the Division of Trading and Markets, with whom we have shared numerous iterations of the new model. They were enormously helpful and constructive as we have progressed from concept to detail.

No public comments were received and the Commission's action date to issue an approval was August 28, 2008. The SEC requested and the NYSE granted an initial extension of that action date to September 12, 2008. The Commission subsequently requested an additional two extensions and the NYSE granted both, thus extending the SEC's time to act to October 10, 2008. On October 7, 2008 the SEC formally requested another extension to October 24, 2008. Pursuant to the statute the Commission may (with appropriate justification) have until 90 days after the filing appeared in the Federal Register to issue its approval order which in this case would be October 20, 2008.

While we recognize the urgency of the environment that the SEC has been operating within over the past few weeks, we are imploring the Commission to grant approval by October 15th for this filing and not delay its implementation for additional procedural reasons.

General Intent of the Rule

We believe that our market must continue to have well-capitalized firms committed to making orderly markets and providing liquidity. It became clear to us that as the trading environment changed with the implementation of the Hybrid Market and the intermarket trading rules (Reg. NMS), market fragmentation increased and the NYSE specialist system no longer served its original purpose. Our response has been to dramatically re-define the specialist role by combining continuing affirmative obligations to our market, and economic incentives based on market performance together with an opportunity to better compete. This filing phases out the current specialist system and creates a "Designated Market Maker" ("DMM") system which operates largely as follows:

- DMM will no longer receive copies of orders prior to public dissemination in Display Book™, thereby virtually eliminating the point of sale informational advantage that the specialist previously had.
- DMMs will have affirmative obligations to maintain a fair and orderly market for their assigned securities, to quote at the National Best Bid and Offer ("NBBO") for specified percentages of time during the trading day, add liquidity in keeping with NYSE provided depth guidelines and to facilitate price discovery during market openings and closings and during periods of substantial trading imbalance.
- DMM's will supply an additional pool of liquidity to fill incoming orders ("Capital Commitment Schedule" or "CCS") between, at, and away from the NYSE's quote.
- DMM will no longer have an agency role in the NYSE Market and, as such, will be allowed to trade on parity with all market participants.

Timing and Priority

These changes are of the utmost priority to our market, and our future is largely dependent on the immediate modernization of our system and implementation of these rule changes. We have repeatedly emphasized this priority to the Commission and the staff throughout this process.

The logistics in implementing changes of this level of complexity cannot be overstated, and we are now running into the outer-boundary of our ability to roll-out these changes during 2008. Another two-week delay will require us to overlap and/or combine two related software releases, thus complicating implementation and introducing unnecessary risk. Any delay beyond that (October 17th) would impact our ability to simultaneously reach other industry milestones, such as the BATS Exchange rollout, and will impact our customers' ability to make system changes given typical year-end code freezes.

Thank you for your attention to this matter. I know you have been briefed by Erik Sirri and his team, and several of you have also been briefed by us as well, but if we can be of any assistance, please call on me.

Regards,
Duncan Niederauer