August 25th, 2010

Via email, rule-comments@sec.gov

File Number SR-NYSE-2010-55

Ms. Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Proposed New York Stock Exchange rule change with respect to the meaning, administration, and enforcement of Rule 128(g)

We appreciate the opportunity to comment on New York Stock Exchange LLC's (the "NYSE") propose rule change that adopts a stated interpretation with respect to the meaning, administration, and enforcement of the NYSE's Rule 128(g).

Prior to the rule change, Rule 128(g) provided that an officer, acting on his or her own motion, might review potentially erroneous executions that occur and, among other things, declare such transactions null and void. Any such action was to be taken, generally within thirty minutes, but under no circumstances later than the start of Regular Trading Hours of the Exchange on the next trading day. Although the NYSE indicates that the rule change is merely an interpretation of the existing rule, it contains two extraordinary new provisions that could not have been anticipated from the plain meaning of the original rule. First, the rule change provides that a series of transactions in a particular security may constitute one event, even if the transactions occur over several days and involve numerous buyers and sellers. Second, the rule change provides that the officer's action must take place, not by the next trading day for the exchange, but by the next trading date for the security, which may be weeks or even months later if trading is halted in the interim.

We urge the Commission to abrogate the rule change because the rule change does not promote just and equitable principles of trade, but instead imposes impediments to the operation of a free and open market. Furthermore, the retroactive application of the rule change operates to deprive investors of their property rights, calling into question the constitutionality of the rule change.

Factual Background

The NYSE proposed the rule change because of trading of U.S. Bancorp's ("USB") depositary shares (the "Depositary Shares" or "USB PRA") representing an interest in a share of USB's Series A Non-Cumulative Perpetual Preferred Stock (the "Preferred Stock").

1. In May 2010, USB offered to exchange the Depositary Shares for outstanding Normal ITS securities (the "Notes"). A prospectus, dated June 4th, 2010, described the terms of the Depositary Shares, including the liquidation preference of the Preferred Stock related to the Depositary Shares.

2. Trading in the Depositary Shares opened on Friday, June 11th, 2010, under the ticker USB PRA. Although there were bids and offers for the Depositary Shares around a midmarket price of approximately $79, there were no trades until June 16th.

3. Over the following days, there were at least 35 trades, which took place on a number of stock exchanges, including the NYSE. We believe that all trades took place at prices between $75 and $86, with most trades occurring around $79. Throughout most of regular trading hours, there were multiple buyers and multiple sellers on each side of the market in the Depositary Shares. We purchased Depositary Shares on the NYSE at this time.

4. On June 18th, at 12:00 noon, trading in the Depositary Shares was halted without explanation. That afternoon, a number of "trade error" claims were made. The various regulatory officers rejected these claims, and messages were transmitted that the trades would stand.

5. In the following three days, the previous week's trades were settled in the normal manner, and the Depositary Shares were delivered against appropriate payment.

6. A week later, the NYSE issued a statement that noted that the allocation of shares in the exchange had been adjusted and stated: "based on information indicating that the prices at which the shares were trading were not reasonably related to the market value of such shares…. The NYSE is continuing to assess this matter in consultation with the issuer and other relevant parties." There was no explanation at that time, nor has there been an explanation to date, as to how the NYSE determined that the "market value" of the Depositary Shares was anything other than what the market had dictated over the week of trading.

7. On July 23rd, 2010, more than a month after trading ceased, the NYSE issued the following press release: "USB PRA has been halted from trading since June 18, 2010. After extensive consultation with the related regulatory authorities, the trades executed on June 16, June 17, and June 18 will stand. Trading in this security will re-open on Wednesday, July 28, 2010."

8. On July 27th, 2010, five weeks after trading in the Depositary Shares ceased, the NYSE issued the following press release: "USB PRA has been halted from trading since June 18, 2010, based on information indicating that the prices at which the shares were trading were not reasonably related to the market value of such shares and following information that the allocation of shares associated with an exchange offer for USB PRA had been adjusted. The NYSE has filed an immediately effective interpretation to Rule 128(g) with the Securities and Exchange Commission, which clarifies that an Officer of

the Exchange may review the transactions such as those that occurred in USB PRA on June 16, 17, and 18, 2010, and declare them null and void. Pursuant to that interpretation, the NYSE will nullify the trades on those dates prior to the re-opening of trading now scheduled for Friday, July 30, 2010."

There was no explanation of how the NYSE determined that the market value of the Depositary Shares was higher than the trading prices or as to why the NYSE had reversed its position over the weekend. Furthermore, there was no allegation by the NYSE of fraud or explanation as to why there might have been a lack of information available to the marketplace. The terms of the Preferred Shares had been described in a prospectus prepared only weeks before and readily available to all sellers and buyers during the trading period.

Analysis

1. The Commission should abrogate the rule change because, contrary to the NYSE's assertions, the rule change is inconsistent with Section 6(b) of the Securities and Exchange Act of 1934 (the "Act"), and it does not further the objectives of Section 6(b)(5) of the Act. It does not promote just and equitable principles of trade.

Because the rule change permits officers to unwind trades many trading days after the execution of the trades, the rule change permits officers to void contracts that not only have been executed, but also settled, with payment fully made, and settlement complete. Rule 128(g) is designed to provide a non-judicial way to handle, within minutes or hours, trades that have been made in error. In extraordinary circumstances, the original rule permits action to occur before the market opens on the following trading day. The rule change, by contrast, imposes no time limit on an officer's decision, as long as trading in the security has been halted or has otherwise not occurred.

The rule change permits officers to view a series of transactions over one or more trading days as one event, even though, as in the case of the USB PRA trades, multiple sellers and multiple buyers executed the transactions over several trading days. It strains credulity to believe that each of these many trades were the result of fraudulent and manipulative acts. Indeed, the NYSE did not reveal any fraud or manipulation in the case of the USB PRA trades, only that the prices at which the trades were executed varied from the "value of the security."

In general, the securities laws and the rules of the NYSE are designed to permit the marketplace to establish the "value" of securities. A security's value is the price a willing buyer will pay a willing seller, assuming that both have adequate information about the security. And, in the USB PRA case, there is no allegation that disclosed information was inadequate.

There do appear to have been serious errors in the settlement of the exchange of the Depositary Shares for the Notes. Three separate deliveries, and two reversals of deliveries, were made of the Preferred Stock between June 10th, 2010, and June 16th,

2010. Although the NYSE has not indicated what constituted the "incorrect or grossly misinterpreted structural or issuance information," it may be that the errors in settlement of the exchange form the basis of the NYSE's belief that investors "grossly misinterpreted" the facts. However, an analysis of the trading prices that occurred as the allocations were adjusted and corrected reveals that the allocations made no difference to the market price. This analysis implies that investors were not misinterpreting the value of their Depositary Shares based on the allocations:

> Noteholders who tendered $150,000 face amount of notes, on June 10th received 150,000 Depositary Shares, even though each share had a liquidation preference (i.e. face amount) of $1,000.
>
> Overnight, on June 15th/16th, the number of shares in Shareholders' accounts was reduced by a factor of 99% - a Shareholder who had 150,000 Depositary Shares on June 15th saw his holdings reduced to 1,500 (which was still not the right number of shares). The initial trades, on June 16th, happened within a range of $77 to $86.
>
> On June 17th, trading continued. We believe that the trades on this day were within a range of $79 to $86.
>
> The following day, the shares in accounts were further reduced, by a factor of 90%. We believe that trades on that day happened within a range of $79.00 to $79.51.

Thus, regardless of what allocations were made, the trading price remained in a narrow range. The allocation errors were not a source of misunderstanding of value to investors.

Moreover, the terms of the Depositary Shares and related Preferred Stock were disclosed clearly and unambiguously on the cover of the prospectus for the exchange. The NYSE suggests that the rule change permits the correction of trades based upon "incorrect or grossly misinterpreted structural or issuance information," but it is unclear, in this context, what was incorrect or who grossly misinterpreted what. By adopting the rule change, it would appear that the NYSE does not expect investors to read prospectuses available at the time of a sale.

2. Even if the Commission does not abrogate the rule change for future trades, the rule change should not be applied retroactively to the USB PRA trades.

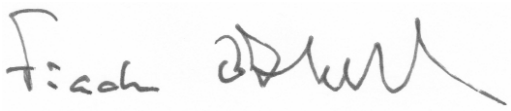
First, contrary to the NYSE's suggestion, the rule change is not a mere interpretation of the existing words in the rule, but a complete change in procedure. For example, the existing rule contains the notion that any officer's ruling must generally be within thirty minutes, but even in extraordinary circumstances, "any such action of the Officer must be taken by no later than the start of the Regular Trading Hours of the Exchange on the trading day following the date of execution(s) under review." By

contrast, the rule change provides: "If the security is halted immediately following the last transaction in the Event, and before pricing ceases to be dislocated, the next trading date for all transactions comprising the Event will be the date on which trading resumes following the halt." "Trading day" and "trading date" do not carry the same meaning. An NYSE trading day is day is commonly understood to be any day other than a weekend or an NYSE holiday.

Second, the application of this rule change to the USB PRA trades makes a mockery of the established system because of the process that occurred. On June 18th, 2010, certain transactions were reviewed, and "trade stands" rulings were issued. On Friday July 23rd, 2010, the NYSE announcement said, "After extensive consultation with the related regulatory authorities, the trades executed on June 16, June 17, and June 18 will stand." On Tuesday July 27th, after the close of business, the NYSE reversed itself and proposed this "rule change." At what point can investors have confidence that a matter has been settled?

We appreciate the opportunity to comment on the proposed rule change. Please do not hesitate to contact me should you have any questions or if I may be of assistance to you as you consider these issues.

Very truly yours,



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