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Via email to www.rule-comments@sec.gov

August 3, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Concept Release: Securities and Transactions Settlement
(Release No. 34-49405; File No. S7-13-04)

Dear Mr. Katz:

The New York Stock Exchange (“NYSE” or the “Exchange”) is pleased to have the opportunity to comment on the Concept Release. In particular, we direct our comments to Section IV, Immobilization and Dematerialization of Securities Certificates.

As is reflected in the Concept Release, the Exchange has worked closely with the Commission and the industry over the years on efforts to streamline securities handling, and to encourage the immobilization of securities certificates. In more recent years the Exchange has been integrally involved in the institution of the system for Direct Registration of Shares, or DRS, most recently amending its rules to make clear that listed companies can issue securities in a completely dematerialized form, provided the company participates in DRS. As a result, it is now within the control of the listed company, subject to applicable state law, whether certificates are made available to the company’s shareholders.

The NYSE supports both immobilization and dematerialization efforts, for all the reasons that are noted in the Concept Release. The Exchange continues to support efforts to encourage the movement of listed companies to participate in DRS, and believes that its listed companies are generally supportive of and appreciate the benefits of DRS.

Accordingly, the Exchange advocates a uniform SRO listing standard mandating that companies participate in DRS.¹

The Exchange does not believe that it would be onerous for companies to make themselves eligible for DRS. To the extent a company's charter or bylaws precluded participation in a system such as DRS or required issuance of a certificate in every case, which we understand to be rare, such provisions would require amendment. We understand that DTCC is able to advise issuers regarding what corporate actions may be necessary. Otherwise, a company would simply have to retain a transfer agent that is eligible to utilize the FAST system for processing transfers.

We must emphasize that the Exchange would consider it important that any such listing requirement be one that is imposed uniformly at the various listing venues in the United States. We note that this coordinated arrangement has worked well in the case of other industry initiatives discussed in the Concept Release, such as the SRO rules requiring that securities to be listed must be made depository eligible, if possible, and requiring members to use the facilities of a depository for the book-entry settlement of all transactions in depository-eligible securities.²

Our information is that as of June 24, 2004 approximately 480 of our listed companies participate in DRS.³ If a rule is adopted requiring all listed companies to participate in DRS, there would be a significant number of NYSE companies that would have to take at least some steps to comply with the rule. An even larger portion of the listed population of other markets would be required to become DRS participants under a uniform listing rule. It will be important to provide a sufficient transition or phase-in period under any new rule to allow this large population to become compliant.


The NYSE would also like to note an issue raised by several listed companies, *viz.*, that brokerage firm employees are not sufficiently well educated regarding the DRS system, so that investors can experience delays and frustrations when seeking to sell or transfer DRS positions. It will be vital for the industry to assure appropriate education to

¹ Such an NYSE standard would be applicable only to issues currently subject to the requirements of section 501.01 of the Exchange's Listed Company Manual. For many years, both debt and various kinds of derivative securities listed on the Exchange have commonly been issued in a book-entry only format, and would not be required to be in DRS.

² See Concept Release at text accompanying notes 109 and 110.

³ Given the increased interest in dematerialization by the industry and the Commission, the Exchange solicited comment from all its listed companies regarding their views on dematerialization generally, and their experience with DRS in particular. The Exchange received responses from 32 listed companies. Almost all recognized the benefits of DRS, and all of the 18 respondents who are DRS participants described their experience with the system as positive. Only one respondent specifically opposed making DRS participation mandatory for listed companies.

Mr. Jonathan G. Katz
August 3, 2004
Page 3 of 3



maximize the benefits of broad scale issuer participation in DRS. In this regard, it may well be useful for the Commission to establish maximum processing times for brokerage firms handling DRS positions. To the extent investors experience inefficiencies, it will only adversely affect their willingness to hold common stock in a DRS position.

The Exchange appreciates the opportunity to express its views regarding these important issues. Please feel free to call on us if you have any questions about any of the foregoing.

Very truly yours,

Darla C. Stulay