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Via email to [www.rule-comments@sec.gov](http://www.rule-comments@sec.gov)

January 8, 2007

Ms. Nancy Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: Regulation NMS – File No. S7-10-04

Dear Ms. Morris:

The New York Stock Exchange is requesting an extension of the implementation date of SEC Regulation NMS Trading Phase, targeted for February 5, 2007. We believe that a brief extension of the Reg. NMS Trading Phase date is in the best interest of the industry and investors, and will allow for an orderly implementation of Reg. NMS.

NYSE compliance with the requirements of Reg. NMS has been programmed into the several phases of the NYSE Hybrid Market<sup>sm</sup> rollout, as approved by the SEC.<sup>1</sup> The NYSE is currently rolling out Phase III, which includes automatic execution of incoming orders and auto-routing of orders to protected quotations of other markets to avoid trading through those quotes. Also included in Phase III are the increase of order size for auto-execution to one million shares and the lifting of time restrictions on Direct+<sup>®</sup>. In compliance with Reg. NMS, the NYSE will indicate when our quotes are deemed “slow” as filed, approved and programmed in Phase III. In Phase III, the NYSE introduced a new Immediate or Cancel (“IOC”) order, which routes away to a better priced quote just once if it cannot be executed on the NYSE. This single route to an away quote is the only manner in which the NYSE’s IOC order differs from the IOC order type required by Reg. NMS, as part of the definition of “automated quotation.”<sup>2</sup> Phase IV of Hybrid provides an IOC that does not route, as required by Reg. NMS.

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<sup>1</sup> Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

<sup>2</sup> SEC Rule 600(b)(3)(iii).

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The NYSE had anticipated that it would have been in a position to complete the Phase III rollout by early December 2006. Delays in the Phase III rollout schedule have pushed back completion until later in January 2007. Consequently, the rollout of Phase IV, which includes the Reg. NMS IOC and Intermarket Sweep (“ISO”) order types, is expected to be completed by the end of February 2007.<sup>3</sup> Until the completion of Phase IV rollout, NYSE quotations would fail to meet one of the five criteria of the definition of “automated quotation” in order to qualify as protected quotations -- IOC *without* routing. However, for all intents and purposes, the NYSE quotes at the conclusion of Phase III will be automated and accessible. Results to date indicate that the NYSE Hybrid Phase III stocks are “fast” 99.3% of the time on a time-weighted basis.

If the Trading Phase were to be implemented on February 5, 2007, the NYSE’s quotes, which would in fact be automated and accessible, would be deemed “slow.” As a technical matter, the NYSE is unable to mark a quote “slow” without actually making it slow, i.e., shutting off automatic execution. We believe that requiring the NYSE to take away automatic execution and automatic routing to a better away quote because we are temporarily unable to implement the “Reg. NMS IOC” would jeopardize best execution for investors and the market as a whole. (Any change to the methodology of marking quotes as “slow” would require additional systems development work.) We also believe that rushing a Phase IV rollout, without appropriate testing and quality assurance, puts our trading systems and, thus, the industry and investors at unnecessary risk.

Accordingly, we request a four-week extension of the Reg. NMS Trading Phase date to March 5, 2007. We thank you for your consideration of this request and look forward to working with the Commission to implement Reg. NMS in a manner that best serves the public.

Sincerely,



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<sup>3</sup> The completion of Phase IV will also allow the NYSE to implement a Reg. NMS-compliant locked/crossed market rule and the few remaining components of broker d-quote.