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Via email to rule-comments@sec.gov

February 24, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: Internet Availability of Proxy Materials (December 8, 2005); Release No. 34-52926; File No. S7-10-05

Dear Ms. Morris:

The New York Stock Exchange, Inc. (“NYSE”) is pleased to take this opportunity to comment on the proposals made by the Securities and Exchange Commission (the “Commission”) in the above-referenced release regarding Internet availability of proxy materials (the “Proposing Release”).

The NYSE supports the Commission’s proposal to provide an alternative method for issuers and other persons to furnish proxy materials to shareholders by posting them on an Internet web site and providing shareholders with notice of their availability. The NYSE has long recognized the importance of investors receiving adequate information regarding listed companies and, in fact, has required for many years that all listed companies distribute an annual report including annual audited financial statements to their shareholders. We support the concept of a “notice and access” alternative that offers shareholders the opportunity to request a free paper copy of the proxy materials should they so desire.

In September 2005, the NYSE filed a proposed rule change¹ with the Commission, proposing to amend its rules to provide that companies can satisfy the annual financial

¹ See SR-NYSE-2005-68 (September 30, 2005). This filing is still under review by the Commission.

statement distribution requirement by making the company's annual report on Form 10-K, 20-F, 40-F or N-CSR available on or by a link through its corporate website, with a prominent undertaking in English to deliver a paper copy of the company's complete audited financial statements free of charge to any shareholder who requests it. As proposed, a listed company will also be required to issue a press release stating that its annual report has been filed with the SEC. In its proposed rule filing, the NYSE noted that existing SEC requirements regarding delivery of proxy statements mean that the NYSE's proposed rule changes for annual audited financial statements would have minimal effect on domestic companies subject to the proxy rules due to the current requirement for physical delivery or electronic delivery only upon the consent of shareholders. The Commission's proposed "notice and access" option would mean that domestic companies could choose not to physically deliver any paper documents to shareholders other than the proposed required notice.

In the Proposing Release, the Commission seeks comment on whether or not the proposed "notice and access" model will have an impact on discretionary broker voting, specifically citing to NYSE Rule 452.² NYSE Rule 452 permits a broker, in specified circumstances, to vote on behalf of a beneficial owner if it has furnished proxy soliciting materials to the beneficial owner and has not received voting instructions. The NYSE notes that, in April 2005, we created a Proxy Working Group to review the NYSE rules regulating the proxy voting process, and more specifically to review and make recommendations with respect to NYSE Rules 450-460 (with a particular focus on Rule 452) and 465, all of which relate to the solicitation of proxy materials. The Proxy Working Group is currently formulating recommendations that are anticipated to be published in the coming weeks.

In addition, the Commission seeks comment on whether certain elements of the fees that are currently charged to issuers by intermediaries forwarding proxy materials to beneficial holders should be allowed to continue, citing to NYSE Rule 451.³ The NYSE recognizes that the Commission's proposed "notice and access" alternative presents a

² The Commission notes that matters that are the subject of a contest are considered non-routine for purposes of NYSE Rule 452, meaning that brokers may not vote on such matter absent instruction from the beneficial owner. The Commission goes on to state that staff at the exchanges determine whether a contest exists for purposes of the discretionary broker voting rule based on exchange rules and interpretations. The Commission provides as an example a purported NYSE interpretation suggesting that a person other than the issuer must solicit at least 50% of the issuer's shareholders for a contest to exist under Rule 452. The NYSE respectfully disagrees with the Commission's analysis of our position on proxy contests. The NYSE considers that a proxy contest exists with respect to any shareholder that receives dissident proxy materials which include the actual proxy. For example, if dissident shareholders make proxy materials available to all shareholders via the proposed "notice and access" model, the NYSE would consider the proxy contest to cover 100% of shareholders, and brokers would not have the ability to vote any proxies absent instruction. If, however, dissident shareholders provide access only to a limited group of shareholders, regardless of whether such shareholders represent more or less than 50% of the issuer's shareholders or outstanding voting securities, the NYSE would prohibit uninstructed broker voting only with respect to those specific shareholders.

³ NYSE Rule 451 sets forth a schedule of fees that NYSE members may charge to issuers for forwarding proxy materials.

fundamental change to the current proxy delivery system that may well render our current fee structure unsuitable. In light of the Commission's proposed alternative to the current proxy delivery rules, the Exchange intends to undertake a full review of the current fee structure with the participation of all of our affected constituents to determine what changes to the current fee schedule are appropriate.

Thank you for your consideration of these comments. We would be pleased to answer any questions or provide further information that you may find helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Yeager", with a long horizontal flourish extending to the right.

Mary Yeager
Acting Corporate Secretary