INSTINET GROUP

October 25, 2004

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: File No. SR-NYSE-2004-05 and Amendment No. 1 Thereto

Dear Mr. Katz,

Introduction

Instinet Group Incorporated ("Instinet Group") welcomes the opportunity to provide the Securities and Exchange Commission ("Commission") with our comments on the New York Stock Exchange's ("NYSE") proposed rule change to revise its rules to create a so-called "hybrid market" ("Proposal").[1] Instinet Group, through affiliates, is the largest global electronic agency securities broker and has been providing investors with electronic trading solutions and execution services for more than thirty years. We operate our two main businesses through Instinet, LLC [2] and Inet ATS, Inc ("INET").[3]

Instinet Group firmly believes that competition among marketplaces produces the fairest, most efficient, and innovative trading markets for investors and that the Commission can best foster such competition by establishing a regulatory framework that focuses on assuring that competing markets are transparent and accessible to market participants on non-discriminatory terms.

With transparent and accessible markets, trade-through rules and other mechanisms that mandate interaction among competing marketplaces are not only unnecessary, but bad public policy. They are unnecessary as market participants naturally will seek to interact with trading interest on markets in the NMS on the best possible terms in accordance with their fiduciary obligations to obtain best execution for their customers and their own self-interest when trading for their own accounts. They are bad public policy as they undermine intermarket competition by unduly restricting markets' ability to operate independently from their competitors.

[1] File No. SR-NYSE-2004-05 (filed Feb. 9, 2004) and Securities Exchange Act Rel. No. 50173 (Aug. 10, 2004), 69 FR 50407 (Aug. 16, 2004).
[2] Instinet, the Unconflicted Institutional Broker, gives its customers the opportunity to use its sales-trading expertise and advanced technology tools to interact with global securities markets, improve trading and investment performance and lower overall trading costs. Instinet acts solely as an agent for its customers, including institutional investors, such as mutual funds, pension funds, insurance companies and hedge funds. Additional information regarding Instinet, LLC can be found at *http://www.instinet.com*.
[3] INET, the electronic marketplace, represents the consolidation of the order flow of the former Instinet ECN and former Island ECN, providing its U.S. broker-dealer customers one of the largest liquidity pools in Nasdaq-listed securities. Additional information regarding INET can be found at *http://www.inetats.com*.

Consequently, our strong preference is to let competition do its work and refrain from commenting on other markets' initiatives to restructure their trading processes to enhance their competitiveness. Investors and market participants, the users of the markets, are in the best position to judge the efficacy of such initiatives.

However, if the Commission insists on continuing to mandate the terms of market interaction among competing markets with a trade-through rule, we and others in the industry will find ourselves in the position of considering comment on even the finest details of proposed changes to each market's trading processes because of their potentially significant downstream effects on the operation of other markets and intermarket competition.

The Proposal illustrates this point. The terms under which automatic execution will and will not be available on the NYSE's hybrid market are critical to evaluating its impact on markets competing with the NYSE. But almost uniformly, commenters have stated that the NYSE has not provided sufficient information as to the workings of its proposed hybrid market to provide a basis for informed comment.[4] We agree with these commenters and have many of the same questions regarding the proposed hybrid market as they do. While the NYSE has stated that it intends to make further clarifications to the Proposal in the hopes of addressing commenters' questions,[5] the process so far raises questions regarding the ability of the NYSE to truly integrate electronic and manual components into one hybrid market, and more fundamentally, calls into question the very wisdom of attempting to mandate the terms of intermarket linkage among manual, electronic, and hybrid markets.

The Proposal also provides further illustration of the need for the Commission to include an opt-out exception in any trade-through rule it ultimately may adopt as part of Regulation NMS.[6] The NYSE's hybrid market would continue the informational asymmetry that exists on the Exchange between NYSE floor members and other market

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[4] Donald D. Kittel, EVP, SIA, to Jonathan G. Katz, Secretary, SEC, dated October 1, 2004; Bruce Lisman, Bear, Stearns & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated September 28, 2004; George W. Mann, Jr., EVP & General Counsel, Boston Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated September 22, 2004; Lisa M. Utasi, President, and Kimberly Unger, Executive Director, STANY, to Jonathan G. Katz, Secretary, SEC, dated September 22, 2004; Ellen L.S. Koplow, EVP & General Counsel, Ameritrade, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 22, 2004; Kim Bang, President and CEO, Bloomberg Tradebook LLC, to Jonathan G. Katz, Secretary, SEC, dated September 22, 2004; Ari Burstein, Associate Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, dated, September 22, 2004; Thomas Peterffy and David M. Battan, Interactive Brokers Group, to Jonathan G. Katz, Secretary, SEC, dated September 7, 2004; Jose L. Marques, Ph.D., Managing Member, Telic Management LLC, to Jonathan G. Katz, Secretary, SEC, dated September 21, 2004; and Eric D. Roiter, SVP & General Counsel, Fidelity Management & Research Company, to Jonathan G. Katz, Secretary, SEC, dated August 10, 2004.

[5] Philip Boroff, "NYSE to Detail Automation Plan in Three Weeks, Thain Says," Bloomberg (Oct. 10, 2004).

[6] Securities Exchange Act Rel. No. 49325 (Feb. 26, 2004), 69 FR 11126 (Mar. 9, 2004) (File No. S7-10-04) (Regulation NMS Proposing Release).

participants. This informational asymmetry and the time and place advantages it confers on NYSE floor members over other market participants has been at the heart of concerns with the inherent fairness of the NYSE market that have been expressed by the Commission, investors, and market participants from the consideration and adoption of the Securities Exchange Act of 1934 to today.[7] Investors and market participants need to have a safety valve to avoid interacting with a particular marketplace when they are concerned with the inherent fairness of that marketplace. An effective opt-out exception to the trade-through rule would provide that necessary safety valve.

In sum, we respectfully request that the Commission not take any further action on the Proposal until the NYSE provides commenters with the necessary information to have an informed basis upon which to comment on the Proposal. In addition, we believe that the Proposal underscores the need for the Commission to provide an opt-out exception to any trade-through rule it adopts as part of any final action on proposed Regulation NMS.

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If you have any questions regarding this letter, please do not hesitate to contact me directly at 212.231.5501, or Paul Merolla, EVP and General Counsel, Instinet Group Incorporated, at 212.310.7548.

Sincerely yours,

Edward J. Nicoll
Chief Executive Officer

cc: The Honorable William J. Donaldson, Chairman
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner

Annette L. Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation

Giovanni P. Prezioso, General Counsel, Office of General Counsel

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[7] See, e.g., SEC, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker (June 20, 1936); Ianthe Jeanne Dugan, Tight-Knit Culture Will Help Shape the Big Board's Future, WALL ST. J., Sept. 18, 2003, at A1; and Thomas G. Donlan, A Likely Story: Specialists Are a Symptom of Monopoly Markets, BARRON'S, (Jan. 12, 2004), at 35.