Bloomberg
TRADEBOOK LLC
Member NASD/SIPC

September 22, 2004

**<u>Via e-mail: rule-comments@sec.gov</u>**

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609
Attention: Mr. Jonathan G. Katz, Secretary

**Re: <u>File No. SR-NYSE-2004-05</u>**

Ladies and Gentlemen:

Bloomberg Tradebook LLC ("Bloomberg Tradebook") is commenting on a rule change proposed by the New York Stock Exchange (the "NYSE"), as amended by amendment no. 1, relating to the NYSE's automatic execution facility, Direct+, published for comment by the Securities and Exchange Commission (the "Commission") in Securities Exchange Act Release No. 50173 (August 10, 2004) (the "Release").

As the Commission knows, the Commission's own Order Execution Rules, Rules 11Ac1-1 and 11Ac1-4, paved the way for electronic communications networks ("ECNs") and other electronic innovators to make the Nasdaq market much more competitive and efficient than they had ever been before. The ECNs and other market innovators, while they have dramatically increased competition in Nasdaq securities, have made only insubstantial inroads into the NYSE market.[1] A number of institutional investors, including several large public pension funds that invest collectively on behalf of millions of American savers, have publicly criticized the

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1 In a staff study released in 2000, the Commission staff reported that ECNs accounted for approximately 30% of total share volume and 40% of the dollar volume traded in Nasdaq securities, but for only approximately 3% of total share and dollar volume in listed securities. SEC Division of Market Regulation, Special Study: Electronic Communications Networks and After-Hours Trading (June 2000), available at: http://www.sec.gov/news/studies/ecnafter.htm. The percentage of Nasdaq trading by ECNs and ARCA has grown since then, but the NYSE has maintained its dominant position in order flow for NYSE-listed securities. Part of the reason for that is the NYSE's failure to provide a transparent market; the instant proposal would continue that pattern in large measure.

NYSE's trading rules and called for change. It has frequently been demonstrated that the NYSE specialists do not route orders to other markets. The NYSE proposal does not seriously address these issues. Its proposal is complex and is not well explained in the filing. Bloomberg Tradebook respectfully recommend that the NYSE proposal not be approved in its current form and that the Commission either press the NYSE to amend its filing or commence proceeding looking toward disapproval of the filing.

**EXECUTIVE SUMMARY**

The trade press has described the NYSE proposal as "the most radical market structure change since the specialist system was created in the 19th century."[2] Clearly, the NYSE has made a substantial effort to introduce technological innovation to its market and we commend that effort. We note, however, that the NYSE proposal is not fully described in the Release. Much is left to the imagination as to exactly how the hybrid market will work. We believe the Commission should require the NYSE to clarify its proposal and to address certain fundamental issues concerning compliance with the provisions of the Securities Exchange Act of 1934 (the "Exchange Act") applicable to the NYSE, including particularly Sections 6(b)(5) and 11A.

The proposed hybrid market would permit the trading interest of specialists and Floor brokers to remain undisclosed while at the same time allowing their hidden orders to interact with orders coming into the NYSE. The NYSE proposal in its current form is at odds with the widely-praised policy judgment the Commission made in adopting the Order Handling Rules in 1996, which outlawed the hidden markets for Nasdaq stocks that previously had flourished on Instinet and brought transparency and greater competition to that market. The Commission's rules also leveled the playing field between market professionals and investors. We believe the best course of action for the Commission to take is to require that the interests of NYSE Floor brokers be fully disclosed and that Floor members' orders not be given standing unless they have been disclosed generally to the public and accessible via Direct+.

Though promising in certain respects, moreover, the proposal on the whole is unclear and incomplete.[3] The NYSE has not explained how its rules would work in practice — who would be advantaged and who would be disadvantaged by the

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[2] Isabelle Clary, "Stop the Opt Out?: NYSE auto-ex plan could negate need for a trade-through exemption," Securities Industry News (August 8, 2004).

[3] The NYSE itself, conceding that its proposal is subject to further revision, notes that "[a]s the Exchange continues to evaluate and refine these proposals, the Exchange represents it will continue to reach out to its constituents for their input and analysis and will make appropriate amendments as necessary." Release at n. 4.

choices the NYSE has made vis-à-vis such things as (i) the operation of the "sweep" function, including the extent, if any, to which other market centers will be allowed to access quotations on the specialist's book beyond the best bid and offer, (ii) the Exchange's obligation to send orders to other markets offering better markets or greater depth, (iii) the ability of public investors to compete for liquidity with NYSE Floor members, and (iv) the practical effects of allowing the specialists to use autoquote facilities.

The NYSE proposal does not indicate what, if any, limits there may be on intra-day shifts from auto-ex to manual quotations and back again. The proposal does not describe how auto-ex and manual quotations will be distinguished. How and when will changes from auto-ex to manual quotations be communicated? The proposed hybrid market will have three types of time-outs when electronic executions will not be available, but does not make clear who has the authority to call each time-out or how long each would last. Nor does the proposal discuss how Direct+ would interact with the NYSE's Direct Order Turnaround system ("DOT"). In fact, it appears that Direct+ will replace DOT, but that important element we learned from conversation with NYSE staff, not from the Release. Is the Display Book identical to NYSE OpenBook? More fundamentally, the NYSE does not explain how its proposal protects limit orders, advances the goals of the national market system and adheres to the principle of best price when it would permit trade throughs on sweep orders of better prices on other markets below the best bid and offer.

It is clear that the current NYSE market structure and the ITS rules are very different from the market structure in the Nasdaq market and from the Commission's Order Execution Rules. This is evident not only in the presence or absence of a trade-through rule, but also in the presence or absence of hidden orders and the "clean-up" prices for blocks under NYSE Rule 127. The Commission appears to favor a common structure for both markets, but a uniform market structure with the same or comparable rules will not be achieved unless these other points of differentiation are lessened or eliminated. As we explain below, however, we think the need for common approaches does not imply a need for imposing a trade-through rule across all markets. We respectfully suggest that such a rule misplaces the duty of best execution on markets instead of where it belongs — on the brokers and investment managers who, as fiduciaries, owe the duty to their beneficiaries.

We offer our comments on these issues for the Commission's consideration in the description and analysis that follows. Our comments are necessarily based to some extent on conjecture and surmise, precisely because of the defects in the filing. Nevertheless, we hope they will assist the Commission in its consideration of the NYSE filing.

## I. DESCRIPTION OF THE NYSE PROPOSAL

Under the NYSE's Direct+ proposal, all quotations on the NYSE would be subject to automatic execution unless otherwise designated. Volatility in the proposed hybrid market would be controlled by means of Liquidity Replenishment Points ("LRPs"). Under the proposal, when an LRP is reached, autoquote would be suspended and a quotation would not be available for automatic execution. At that point, the specialist, the crowd and off-floor market participants could enter orders on either side of the market. The proposal includes two kinds of LRP, a price-based LRP and a momentum-based LRP. The price-based LRP would be a minimum of five cents from the NYSE best bid or offer, rounded to the next nearest nickel. The momentum-based LRP would be triggered by a specified price movement over a specified period during a trading session. As noted above, the NYSE has yet to determine the parameters of the momentum-based LRP.

Auto-ex market orders, marketable limit orders and incoming ITS commitments to trade would all be eligible for automatic execution against the NYSE's "Display Book". Although not defined as such in the Release, we assume the Display Book is identical with NYSE OpenBook and that it will exclude quotations of the specialist for its own trading account and quotations of the Floor brokers. In addition, the NYSE would create a new order type, Auction Limit ("AL") orders, for submission to the manual auction market. AL orders, market orders, and non-marketable limit orders would remain on the Display Book for handling in the auction market.

Under the proposal, the unfilled balance of any auto-ex market order or marketable limit order would "sweep" the book, automatically being executed until it is filled, its limit price is reached or an LRP is reached. Bids and offers on the Display Book between the displayed bid or offer and the sweep "clean-up" price would receive price improvement at the "clean-up" price. If during a sweep a better priced bid or offer is published in another market in which an automatic execution is immediately available, the portion of the sweep order that satisfies the better priced bid or offer would be automatically routed by the NYSE to the away market, unless matched by the NYSE specialist.

The sweep price also could be improved by use of functions only loosely analogous to ECN "reserve" quotations that are available for use by Floor members only, the Broker Agency Interest File and the Specialist Interest File. As the Commission knows, ECNs were not permitted to give "reserve" orders equal priority with disclosed orders at the same price. The goal of the Order Execution Rules was to stamp out hidden markets. In the case of ECNs, the reserve is a means by which ECN participants that have entered displayed orders can attach reserve quantities at the same price, but all displayed orders have priority over all reserve quantities.

The NYSE filing, however, grants hidden orders entered by the Floor equal standing with displayed orders, including public limit orders. By using Specialist

Interest Files, Specialists would be able to insert quotations for its dealer account. The Specialist Interest File could improve a sweep price, facilitate a single-price execution at the bid or offer price and systematically match outgoing ITS commitments. Floor brokers would be able to place within the Display Book system Broker Agency Interest Files at varying prices at or outside the quotation with respect to orders the broker is representing. Neither the Specialist Interest Files nor the Broker Agency Interest Files would be disseminated unless at the NYSE's best bid or offer price. Public investors would not be offered any functionality similar to these Floor-only functions, which appear designed to preserve and enshrine the time-and-place advantages Floor members today enjoy and exploit at the expense of public investors.

Under current rules NYSE's the proposal would not change, the specialist could determine how much depth to display even at the highest bid and lowest offer,. Under the proposal, there would be no requirement that the specialist display to the public how much liquidity is available on the NYSE Floor.

This discretionary transparency finds support in existing NYSE Rule 60(g)(1) but would seem to contravene the Commission's Quote Rule. The NYSE rule provides that "Each specialist shall promptly report in each reported security in which he is registered the highest bid and lowest offer made in the trading crowd in such security *and the associated quotation size that he wishes to make available* to quotation vendors." [emphasis added] If we are reading it correctly, the Rule leaves to the discretion of the specialist the size he wishes to make available to quotation vendors and would appear that the Rule contravenes the reporting requirement contained in Securities Exchange Act Rule 11Ac1-1(b)(1).[4] At the same time, the proposed specialist interest file apparently would give this hidden order bank equal standing with disclosed orders. In other words, the specialist would achieve standing just by standing at the post.

In addition to raising questions as to whether the NYSE specialists are today out of compliance with the Quote Rule, we think the proposed specialist interest file and floor broker agency interest file should not be hidden. At a minimum, the Commission should require publication of that trading interest and, at the same time, should revisit the Vendor Display Rule and make mandatory the display of depth levels at least five levels deep. The Vendor Display Rule was last amended in November 1983.[5] It was adopted when there were eight price points to the dollar and it requires consolidated information

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[4] Rule 11Ac1-1(b)(1)(i) refers to quotations "communicated" to an exchange by a responsible broker or dealer, but presumably that was not intended to give NYSE specialists the option to disclose only from among the agency orders placed on their books by other members the liquidity information they choose to display, particularly in the case of orders communicated to the NYSE specialist by other NYSE members, via the DOT system or directly on the Floor.

[5] Securities Exchange Act Release 20409 (November 22, 1983).

only with respect to the best bid and offer. In effect, decimalization has had the unintended consequence of undermining the availability of essential market data — the "oxygen" of the market.. Until the Vendor Display Rule is updated, the markets will have considerably less transparency, and investors less information, than existed before decimalization.

## II. THE PROPOSED HYBRID MARKET WOULD NOT PROTECT BEST PRICE

The NYSE has emphasized in its comments to the Commission on Regulation NMS the importance of protecting customers over market professionals and the importance of protecting limit orders. In its letter to the Commission on proposed Regulation NMS, the NYSE emphasizes the following principles, among others:

- **The Customer Comes First.** Our national market structure should require intermediaries to place their customers' interests ahead of their own;

- **Best Price.** Every order, regardless of the market to which it is sent, should have the opportunity to receive the best price available;

- **Protection of Limit Orders.** Limit orders provide liquidity to the market and accessible limit orders must be assured an execution before a trade occurs at an inferior price . . . .[6]

These objectives are clearly in the public interest. The NYSE proposal, however, does not achieve them. It operates as follows:

> *Customer Protection.* The NYSE's proposal gives the NYSE Floor members, through hidden orders, the opportunity to compete with, penny and jump alongside pre-existing limit orders entered by customers.
>
> *Best price.* The NYSE proposal would permit the specialist to avoid any need to ship orders to other markets that offer better prices. It would give limit orders on the NYSE a decided advantage over market orders coming in from off the Floor.

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[6] Letter from Darla C. Stuckey, NYSE (July 2, 2004) in Commission File No. S7-10-04 — Regulation NMS, available at: http://www.sec.gov/rules/proposed/s71004.shtml.

> *Limit order protection.* The NYSE proposal would permit NYSE Floor members to compete with, and penny, limit orders entered by public investors and would effectively frustrate protection of limit orders entered in other markets, continuing the practices the Archipelago Exchange ("ARCA") has brought to light. As the Commission knows, ARCA has testified before the Congress that the NYSE specialists today trade through ARCA limit orders thousands of times a week without any risk of enforcement action by the NYSE.[7] Under the NYSE's proposal, the specialists would continue to do so, this time with the rules adjusted to permit that conduct.

Under Direct+, if amended as proposed, the residual of an auto-ex marketable limit order would sweep the Display Book, that is, Open Book, until either it reaches and is executed at a clean-up price, its limit price, if any, or it triggers an LRP. The sweep price may be improved by the Specialist Interest File and the Broker Agency Interest File. In addition, NYSE Rule 15A, amended under the NYSE proposal to include section 15A.50, would permit the NYSE specialist either to route an ITS commitment to trade to the national best bid or offer displayed on an away market or to systematically match the price. The combined effect of these amendments, it appears, is that the NYSE specialist can trade through better prices on another market center below the national best bid and offer.

We hasten to add an important qualification. We believe the NYSE should not have the responsibility to route orders outside its own market — the investor or his fiduciary, a broker or investment manager, should do this work and not rely on the market center to do the routing. The reason the current trade-through rule does not work and is unlikely to work in future, even with modifications and improvements, is that market centers have no incentive to route orders to a competitor thereby giving up executions and trade prints and, in the case of orders sent to ECNs, risking access fees. Given their business models and incentives, it is unreasonable to rely upon exchange members or ECNs to obtain best execution outside their own systems. In fact, they have the reverse incentive, to stem order flow "erosion". ARCA has complained that the NYSE routinely trades through better prices on ARCA in direct contravention of current ITS rules, and does so with apparent impunity.

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7 *See* Written Statement of Gerald Dean Putnam, Chairman & Chief Operating Officer, Archipelago Holdings, L.L.C., concerning "Market Structure III: The Role of the Specialist in the Evolving Modern Marketplace" before Committee on Financial Services — Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, U.S. House of Representatives, 108th Cong., 2d Sess. (February 20, 2004), at 6.

The emphasis should instead be on those who have a fiduciary duty to their clients —brokers and investment managers. Those entities should bear the responsibility to employ order-management systems, to establish all appropriate connectivity to the several market centers and to use "smart" routing services. The markets should have to provide transparency — above and below the NBBO — and ready access at reasonable fees. With those features in place, the brokers and investment managers will have the tools they need to achieve best execution of their clients' orders. The Commission's job, then, will be to see that brokers and investment managers make appropriate use of those tools in furtherance of their clients' best interests. As noted above, these issues transcend the current NYSE proposal and reach the Commission's Regulation NMS proposal, but they clearly should be borne in mind in evaluating the Direct+ proposal at this point.

The NYSE should of course run its own internal market in a way that honors the best price principle, but the solution to issues of best execution is to banish hidden orders, provide for complete transparency and access to liquidity and then require brokers and investment managers to do what is necessary to achieve best execution of their clients' orders.

Nonetheless, we will examine what the NYSE proposes with this latest iteration of Direct+, which does not honor best price across markets.

The following examples illustrate how the NYSE proposal would affect trading (assume in each case that an investor sends an auto-ex marketable limit order to Direct+ to buy 2,000 shares.):

*Example 1.* The following are offers to sell on the NYSE specialist's book that are displayed on OpenBook:

$15.01 for 100 shares

$15.04 for 100 shares

$15.06 for 400 shares

$15.07 for 400 shares

$15.09 for 1,000 shares

*Analysis.* Under the NYSE proposal, it appears that the 2,000-share investor's order would be filled entirely on the NYSE, as follows:

$15.01 for 100 shares

$15.09 for 1,900 shares.

In this example, the incoming investor order would not have the advantage of the better prices which the offers above $15.01 and below the clean-up price of $15.09 would have provided. Notwithstanding the Commission's best execution discussion in the release accompanying adoption of the Order Execution Rules, the Exchange would give price improvement to the limit orders and price disimprovement to the incoming investor's order.[8]

*Example 2.* The same offers to sell on the NYSE specialist's book are displayed on OpenBook:

$15.01 for 100 shares

$15.04 for 100 shares

$15.06 for 400 shares

$15.07 for 400 shares

$15.09 for 1,000 shares

This time, a competing market center at the same time displays the following offers to sell in the same stock (assume that any other market centers are posting quotations at prices inferior to the NYSE and this second market center):

$15.01 for 500 shares

$15.02 for 2,000 shares

*Analysis.* In Example 2, the publicly displayed price of $15.02 on the away market is below the national best offer but is better than the "clean-up" price on the NYSE. It appears this price would be traded through. That is, to the extent the Direct+ proposal protects best price, it protects only the national best bid and offer. However, the operation of proposed NYSE Rule 15A.50 would diminish even that protection.[9] Under the NYSE's proposed rules, the specialist can choose between (i) shipping an incoming investor order to another market center displaying the national best bid or offer or (ii) systematically matching the national best bid or offer.

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8 Securities Exchange Act Release No. 37619A (September 6, 1996) in text accompanying n. 347ff, available at: http://www.sec.gov/rules/final/37619a.txt; *see also* NASD Notice to Members 97-57, NASD Interpretations Of SEC Order Handling Rules, NASD Limit Order Protection Rules, And Member Best Execution Responsibilities (September 1997), available at: http://www.nasdr.com/pdf-text/9757ntm.txt.

9 Under current NYSE Rule 15A and NASD Rule 5262, exceptions to the existing SRO trade-through rules are provided when the size of the bid or offer traded through is for 100 shares. As noted, the proposed trade-through rule under Reg NMS has no *de minimis* exception. (*See* discussion in Securities Exchange Act Release No. 49325 (February 26, 2004) in text before n. 39.) In our example, we use a pre-emptive offer of 100 shares under the Reg NMS trade-through rule; a comparable preemptive offer under the current ITS Plan would be 200 shares.

In this example, if the away market were displaying the national best offer of $14.99 for 500 shares and the specialist elected to systematically match, the specialist could program its systems to automatically display a pre-emptive 100- or 200-share offer (depending on whether the existing ITS *de minimis* provision is retained or not) to match the best price. The investor's Direct+ auto-ex order would then be filled for 100 or 200 shares at $14.99 and the balance would be executed on the NYSE at the clean-up price.

The NYSE specialist might instead elect to route the investor's Direct+ incoming order to the best price displayed on the away market. In our example, the NYSE specialist would send 500 shares of the investor's 2,000-share Direct+ incoming order to the away market — or, it appears, it could simply ship 100 shares to the away market (depending on what the phrase "portion of any . . . order routed to the [away] book that satisfies such better bid or offer" means — is it "satisfies the price" or "satisfies both the price and the quantity of the better order"?). The specialist could then keep the balance of the order on the NYSE. Importantly, NYSE Rule 15A.50 would require the specialist to route an incoming investor order to the national best bid or offer only if the specialist has not systematically matched the better price (again the proposal is unclear, but it appears the specialist could match the price without having to match the quantity, which would encourage specialists to use blocking technology to match for the minimum permissible amount any away bid as a means of avoiding ever having to ship orders to other market centers). Whether the NYSE specialist elected to match or ship, the effect for the investor under the NYSE proposal would be the same — the investor's order would be executed at inferior prices.

*Example 3.* Assume the same facts as in Example 2, but also assume there is a third market center offering $15.02 for 2,000 shares.

*Analysis.* It appears that, in this example, the NYSE specialist could entirely ignore the superior order in this second away exchange or OTC market since the order is not at the NBBO. Even though the investor's 2,000-share order would get a much better overall execution — it would get $15.02 for the 1,900 shares left after the specialist executed 100 shares at $15.01 if the specialist shipped the order to the third market center — the specialist would be able, as in Example 1, to disimprove the prices received by the investor's incoming market order to the extent of 7 cents a share on 1,900 shares.

We understand the NYSE has asserted orally to interested parties that its amendments to Rule 15A would require that the specialist satisfy the full amount of the best price offered on other market centers before trading at an inferior price on the NYSE. The language of Rule 15A does not contain such a requirement, however, nor does the description in the Release. The language used in the proposed subsection .50 to Rule 15A, "satisfies such better bid or offer", does not clearly indicate that the full depth of the away order, rather than just its price, must be satisfied. There is no indication in the rule, if amended as proposed, that an order on an away market would have to be filled before the specialist executed a trade at an inferior price if the away order were the best price on the away market but inferior to the NBBO. In any event, the language the NYSE uses in Rule 15A.50 appears to indicate the specialist can avoid shipping an order out simply by matching its price without matching the quantity offered on the away market.

None of the issues at stake here has to do with whether a consolidated limit order book (a "CLOB") with time priority for limit orders should be imposed. The issues have to do with price priority, which the NYSE's public statements have suggested is paramount: "every order, regardless into which market it is entered, should compete with every other order and receive the best price, period."[10] The NYSE proposal would permit its Floor members to use hidden orders to compete with public orders and would permit Floor members to avoid shipping orders to rival market centers to obtain better executions.

## III. THE PROPOSED HYBRID MARKET AND HIDDEN LIQUIDITY

Under the NYSE proposal, neither the Specialist Interest Files nor the Broker Agency Interest Files will be displayed unless a quotation in either happens to be the best bid or the best offer. Investors will not be able to see or access that liquidity, but the specialists and the Floor brokers will be able to interact with investors' liquidity. Under the NYSE proposal, the specialist and Floor brokers can price improve sweep orders via their respective interest files. The resultant trading process can be illustrated through the following example:

*Example 4.* Assume the same facts as in Example 1, that is, the following are offers to sell on the NYSE specialist's book that are displayed on OpenBook:

$15.01 for 100 shares

$15.04 for 100 shares

$15.06 for 400 shares

$15.07 for 400 shares

$15.09 for 1,000 shares

In addition to the offers the specialist has displayed on OpenBook, the specialist or a Floor broker has the following offers in the Specialist Interest File or in the Broker Agency Interest File, representing the trading interest of institutional customers:

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10 NYSE, Testimony of John A. Thain, Chief Executive Officer, and Robert G. Britz, Chief Operating Officer, at SEC Hearings on Regulation NMS (April 21, 2004), available at: http://www.sec.gov/spotlight/regnms.htm.

$15.04 for 10,000 shares

$15.05 for 20,000 shares

$15.08 for 100,000 shares

*Analysis*. In its proposal, the NYSE notes that either the Specialist Interest File or the Broker Agency Interest File "could improve a sweep price",[11] but neither is required to improve a sweep price and, it would appear, either can lower the sweep price. In this case, the investor's order would be filled at a lower clean-up price as follows:

$15.01 for 100 shares

$15.08 for 1,900 shares

The Floor members would "price improve" by a penny what otherwise would have been the sweep price, but all this would be done under cover of darkness. The Floor members' quotations would not be publicly disclosed yet they would have full standing alongside disclosed orders.

This is the essence of a hidden market, akin to the hidden OTC markets the Commission condemned and eliminated when it adopted the Order Execution Rules in 1996. By adopting the Order Execution Rules, the Commission will recall, it ended a practice in the Nasdaq market in which market makers, which had been found to collude in setting spreads, quoted one set of prices in the public market and then another set of prices, superior to the public prices, on Instinet. By ending that practice, the Commission encouraged transparency and competition in the Nasdaq market. Spreads narrowed by 30% almost immediately and investors benefited commensurately.

## IV. CONCLUSION AND RECOMMENDATIONS

While we note that the NYSE proposal is unclear in many respects, there is enough there to justify a real fear that the proposal is designed to preserve and protect the Floor's prerogatives, at the expense of the investing public. Several aspects of it appear designed to avoid any true inter-market competition, to permit specialists to trade through superior prices on other markets and to give preferential treatment to hidden orders emanating from specialists and Floor brokers. On the basis of the record to date, and the many unanswered questions concerning how the hybrid market would work, we must respectfully advise the Commission that it cannot make the legally required finding that the NYSE proposal is consistent with the congressional goals, that it promote the congressional goals of a free and open market and a national market system (Exchange

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[11] *See* Release in text following n. 48.

Act Sections 6(b)(5) and 11A) and that it not impose unnecessary or inappropriate burdens on competition (Exchange Act Section 6(b)(8)). We do not believe the solution to the flaws in the NYSE's proposal is to increase the NYSE's responsibility for best execution. As we have stated above, we believe that responsibility properly belongs to fiduciaries. At a minimum, however, the NYSE proposal should not make it more difficult for fiduciaries to meet their best-execution obligations and should be amended to address the failure of the NYSE to ensure best price within its own market. In view of those defects, the Commission should either request the NYSE to amend its filing to cure the defects or the Commission should commence a proceeding looking toward disapproval of the NYSE's proposed rule change.

Finally, we must reiterate our view, expressed above, that the Commission should repair the damage to transparency that resulted from the advent of decimalization. It should revise the Quote Rule and the Vendor Display Rule to require the public disclosure of executable quotations five levels above and below the NBBO. Only by doing that will the Commission restore the transparency that existed before decimalization.

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We appreciate the opportunity to offer Bloomberg Tradebook's views to the Commission on these important issues. We hope our comments prove useful to the Commission and its staff in their ongoing deliberations regarding market structure. If the Commission or any members of the staff wish to discuss these matters with us, please let me know.

Respectfully submitted,

*Kim Bang* by R.D.B.

President and Chief Executive Officer

cc (w/att): The Hon. William H. Donaldson, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Cynthia A. Glassman, Commissioner
The Hon. Harvey J. Goldschmid, Commissioner
The Hon. Roel C. Campos, Commissioner
Annette L. Nazareth, Esq., Director,
Division of Market Regulation
Robert L. D. Colby, Esq., Deputy Director,
Division of Market Regulation
Elizabeth K. King, Esq., Associate Director,
Division of Market Regulation
Giovanni P. Prezioso, Esq., General Counsel

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