SR-NYSE-2004-12-9

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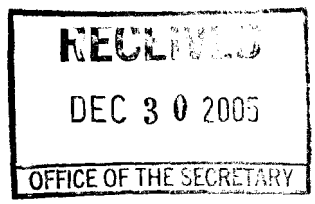

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: File Nos. SR-NYSE-2004-12 and SR-NASD-2003-140

Dear Mr. Katz:

As the Securities and Exchange Commission considers approval of the New York Stock Exchange (NYSE) and National Association of Securities Dealers' (NASD) proposed rules to protect shareholders from abuses in the initial public offerings (IPO) market, we are writing to urge the SEC to ensure that any new rules strengthen protections for shareholders. As trustees representing over $830 billion in public investment and pension funds, we believe that reforms to the IPO market are critical to return integrity to the IPO process and to restore the trust of ordinary investors in the fairness of our financial markets.

In the wake of the reprehensible practices of corporate executives and investment banks that contributed to the worst market fraud in our nation's history, it is important that the SEC take strong action to protect investors. As you know, in April 2003, the NYSE and the NASD entered into a five-year agreement (the "Voluntary Initiative") with New York Attorney General Eliot Spitzer and the SEC which contained several restrictions on abuses in the IPO market, including a prohibition on investment banks allocating "hot" IPO shares to corporate executives. We believe that any rules approved by the SEC must strengthen or clarify the provisions of the Voluntary Initiative, but in no case should these rules be weakened.

When executives and directors receive lucrative shares of IPOs, ordinary investors, employees, and pensioners are harmed. As discussed below, the dishonest practice of IPO "spinning,"

especially in a hot IPO market, must be permanently banned, especially since it was from this abuse that other dishonest and manipulative practices such as "flipping" and quid pro quo agreements such as "laddering" flowed.

An NYSE/NASD IPO Advisory Committee concluded in May 2003 that "Dramatic and immediate run-ups of IPO prices in the immediate aftermarket – particularly during the bubble period of the late 1990s and 2000 – greatly undercut investor confidence in the integrity of the pricing process. These price increases created an immediate profit for the fortunate few who received these hot IPO allocations, and thus provided the impetus, or at the least set the stage, for much of the abusive behavior that occurred."

Arguing in support of the proposed rules, the NASD says the practice of spinning, in which investment banks offer IPO shares to executives of publicly traded corporations who are their clients or prospective clients, "divides the loyalty of the agents of the company (i.e., the executive officers and the directors) from the principal (i.e., the company) on whose behalf they must act. The NASD believes this practice is inconsistent with just and equitable principles of trade."

For these reasons, we support the proposed rules' provisions that strengthen and broaden the prohibition on spinning, with the caveat that there should be no weakening of the Voluntary Initiative's absolute prohibition on the allocation of hot IPO shares to company executives and directors. We also support the provision of these rules which crack down on the dishonest practices of flipping and quid pro quo agreements such as laddering that threaten the marketplace. As the NYSE states in support of the proposed restrictions on flipping, in particular, these rules, "promote a stable aftermarket, whereby purchasers of the offering remain long-term shareholders of the securities and not merely speculators seeking to lock-in instant profits, as was prevalent during the recent stock market bubble of the late 1990s."

We also feel strongly that the Voluntary Initiative's prohibition on investment banking personnel participating in the member firm's allocations of IPO shares to specific individual customers should be maintained. The rules should be clarified so that these essential prohibitions reached under the Voluntary Initiative are kept in place.

As U.S. District Court Judge Shira A. Scheindlin wrote in a recent decision in the litigation on IPO abuses, these practices undermine the principles of fairness and transparency that investors count on in the marketplace: "Where insiders conspire to frustrate the efficient function of securities markets by exploiting their position of privilege, they have perpetrated a double fraud: they have manipulated the market, and they have covered up that manipulation with lies and omissions."

Filing a civil lawsuit against five telecommunications executives who profited from selling hot IPO shares, Attorney General Eliot Spitzer said, "The spinning of hot IPO shares was not a harmless corporate perk. Instead, it was an integral part of a fraudulent scheme to win new investment banking business."

In the late 1990s, millions of ordinary investors invested in stocks in good faith, only to lose trillions and later to learn that the markets in which they had invested were manipulated by insiders to their own benefit. The corporate insiders who were given IPO shares made money while all too many American families lost their hard-earned savings.

The SEC must move to protect investors and restore credibility to our financial markets. The SEC should take a positive step toward renewing confidence in our free-enterprise system and preserving the long-term strength of our nation's economy by implementing strong rules to crack down on IPO abuses.

Sincerely,

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