The Security Traders Association of New York, Inc.

Members of the Security Traders Association
39 Broadway, Suite 1840 New York, NY 10006 • (212) 344-0410 • Fax (212) 943-8478
e-mail - stany@stany.org website - www.stany.org

September 22, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: **Release No. SEC 34-50173; Amendment No. 1 to File No. SR-NYSE-2004-05 Relating to Amendments to NYSE Direct+**

And

Release No. SEC 34-50275; File No. SR-NYSE-2004-43, - Notice of Filing Rule Change Establishing Fees for Receiving NYSE Open Book on a Real-Time Basis

Dear Mr. Katz:

The Security Traders Association of New York, Inc. ("STANY")[1] appreciates the opportunity to comment on the proposed rule change filed by the New York Stock Exchange ("NYSE" or "Exchange") to amend its Direct+ system (Securities Exchange Release No. 50173, 69 FR 50407; Amendment 1 to File No. SR-NYSE-2004-05) ("the Proposal") and on the NYSE's rule change establishing fees for receiving NYSE Open Book on a real-time basis (Securities Exchange Release No. 34-50275; File No. SR-NYSE-2004-43). STANY respectfully submits the comments herein in response to the above captioned Releases.

It is the NYSE's stated intention to expand and modify Direct+ and in so doing "create a unique hybrid market"[2]. In addition to amending Direct+, the NYSE seeks approval to make Direct+, currently a pilot program, permanent.[3] STANY views the expansion of Direct+ as a positive step towards increased automation of the NYSE and believes that a more automated NYSE will benefit the National Market System, its participants, and U.S. investors. We are, however, concerned that the Proposal as written is indistinct and lacking in detail.

Because of the magnitude of the changes proposed, STANY respectfully requests that the Securities and Exchange Commission ("Commission" or "SEC") require the NYSE to supplement its Proposal with additional detail and explanatory material and that the Commission subject the amended proposal a full 90-day comment period and public hearing prior to reaching a conclusion as to whether to approve the Proposal.

[1] STANY is a professional trade organization serving traders in the New York metropolitan area. STANY works to improve the ethics, business standards, and working environment for its members, who are engaged in the purchase, sale, and trading of securities. STANY represents the shared interests of its approximately 1,500 trading professionals from over 300 firms and is the largest affiliate of The Security Traders Association (STA).

[2] The Proposal will expand the category of transactions available for automatic execution on the NYSE. The NYSE also proposes to create a new type of order- an Auction Limit order- and modify the way in which market orders will be handled in the auction market.

[3] Direct+ was approved as a one-year pilot ending on December 21, 2001 and subsequently extended for three additional one-year periods, the latest of which is set to expire on December 23, 2004. See SR-NYSE-2000-18. See also SR-NYSE-2001-50, SR-NYSE-2002-47, and SR-NYSE-2003-30

<u>The NYSE's Proposal to amend Direct+ and make it permanent is a substantial change to the current market system and will have an impact on the trading in market centers beyond the NYSE.</u>

The NYSE has filed amendments to enhance Direct+ and create a "unique hybrid market, where investors will be able to choose the way their orders are executed." While the genesis of the rule changes may have been customer requests for increased automation, the recent filing appears to come as a direct response to the SEC's much-discussed Regulation NMS[4] ("Reg NMS"). In creating the proposed hybrid market, the NYSE is presumably hoping to bring the Exchange in line with provisions in proposed Reg. NMS pertaining to "fast quotes." We assume that it is the desire of the NYSE that, in the event of the adoption by the Commission of a uniform trade-through rule, modifications to Direct+ will result in Direct+ transactions being deemed "fast" and given trade-through protection.

The Proposal suggests major market structure changes within the NYSE, which will have implications for trading in other market centers. The NYSE recognizes the significance of the proposed changes when it states in the Proposal:

> The proposed amendments reflect significant changes to the structure of the Exchange's market. As such, there have been numerous valuable discussions with Exchange customers, members and member organizations concerning the concepts underlying these proposals. *As the Exchange continues to evaluate and refine these proposals*, we will continue to reach out to our constituents for their input and analysis and will make appropriate amendments as necessary. (Emphasis added.)

STANY appreciates the hard work that unquestionably has gone into formulating the Proposal and agrees that changes to market structure of the magnitude suggested in the Proposal require input from participants and considered evaluation. We applaud the efforts that the NYSE has taken to seek comments from its constituents. However, we believe that additional detail should be provided to the public prior to any affirmative decision by the Commission on the Proposal.

Because of its relationship to Reg. NMS, the Proposal has enormous implications, not just for the NYSE, but also for the National Market System as a whole. Given the potential impact of these market structure changes, coupled with the NYSE's request to make Direct+ permanent, we believe that it is imperative that market participants be able to meaningfully review the Proposal, and understand the operation and potential impact upon trading of the changes proposed. Not only is the proposal written in such a fashion as to make it difficult for market participants and investors to understand, it also fails to provide details about key elements of the operation of the proposed amendments. Significant questions are raised and left unanswered.

Although many of STANY's members have discussed the Proposal with members of the NYSE, we feel that answers to open questions need to be submitted in writing to the Commission and made available to the Commissioners and the public. We suggest that the NYSE supplement its Proposal, with specific examples and additional explinations of how the amended Direct+ will operate, prior to the Commission reaching a decision as to whether to approve the Proposal.

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[4] Securities Exchange Act Release No. 34-49325; File No. S7-10-04

STANY is in favor of the NYSE's move to increase automated trading functionality on the Exchange.

In general, STANY views expansion of automated execution of orders suggested by the Proposal as positive. Specifically, we are pleased to see the Proposal include provisions for eliminating order size restrictions from auto-ex, eliminating the 30-second limitation for consecutive auto-ex orders for accounts in which the same person is directly or indirectly interested, permitting immediate or cancel ("IOC") orders to be auto-exed, and permitting designated market orders and marketable limit orders to be auto-exed. We support these extensions of Direct+.

STANY is concerned that certain aspects of the "Hybrid Market", created through the proposed amendments to Direct+, have not been clearly explained. We are also concerned with the open-ended nature of some of the significant details relating to the operation of Direct+.

1. Clarification is needed regarding Liquidity Replenishment Points

The Proposal provides that the unfilled balance of an auto-ex market or marketable limit order would "sweep the book until it is filled, its limit price if any is reached, or a Liquidity Replenishment Point ("LRP") is reached." When an LRP is reached during a sweep, auto-ex and auto-quote functions of Direct+ will be suspended. The Proposal contemplates two types of LRPs: a price based LRP and a momentum-based LRP. It provides that a momentum-based LRP would be triggered by "a specified price movement over a specified period during a trading session" however, the Proposal goes on to state that precise parameters for the momentum based LRP are "under review and will be identified at a later time." LRPs are critical to the working of Direct+ as they are one of several ways in which a specialist will "shut-off" auto-ex.. As such, we believe that clear definitions of both of the proposed LRPs are needed- including how they will work, who will be responsible for setting them, whether there will be any restrictions on how often Direct+ can be suspended for a particular stock in a given day, etc.

The Proposal also provides that, "(a)doption of additional LRPs of changes to a LRP will be made as appropriate." This provision begs for clarification. What if any criteria will be established for the inclusion of additional LRPs? How and by who will changes to, or additions of, LRPs be made? How will notification of these changes or additions of LRPs be made?

2. Additional detail is needed on the how the new Auction Limit order will work.

The addition of new order type, the Auction Limit order ("AL") combined with unusual interpretations of marketable limit and market orders raise many questions and are perhaps the most complex provisions in the Proposal.

In its simplest form an automated market executes a marketable limit to its limit price automatically and displays any remaining balance as a limit order, hence the term marketable limit. Stopping, reviewing, and subjecting that order to the rigors defined in the Proposal does not seem to be consistent with the requirements of limit order display rules and best execution.

We are concerned with the fact that an incoming market order can trigger an execution of an AL order and the subsequent display, without reference to time priority. There are open issues about the priority of AL orders and market orders that have not been designated as auto-ex. Under the Proposal, both of these orders will execute automatically if there is a subsequent order on the same side of the market capable of trading at a price better than the market or AL order is bidding. It is unclear under this scenario which order would receive execution priority.

We also question what is meant by "executed upon entry" as it relates to AL orders, and what specifically will happen if an AL order is not "executed upon entry." These are but a sample of the questions posed by our members after reading the Proposal.

Significant clarification is necessary concerning the handling of AL orders and market orders not designated for auto-ex. and we respectfully request that the Commission require elaboration on the handling of these orders.

3. Rules regarding the "shut-off" of auto-ex require clarification and should be designed in such a way as to make the instances of "shut-off" as infrequent and seamless as possible.

STANY would like to see additional details and clarification of the many different ways the specialist or the system stops or shuts-off auto-ex. For example, auto-ex will be shut off every time a LRP is reached (including LRPs that have not yet been established or that may be added or changed in the future), when a specialist gaps the quote, and when the NYSE's published quotation is in non-firm mode or trading in a security has been halted. In addition, the Proposal contains the following language regarding further circumstances, which would trigger a shut-off of auto-ex:

> … In addition, during the time that a report of execution is being made through the Display Book, automatic executions will continue until the volume associated with the bid and/or offer decrements to 100 shares and then will be suspended until the market is re-quoted. Automatic executions will be suspended until the reporting is concluded.

Given the number of ways in which auto-ex can be shut-off, some of which would seem to lend to many shut-offs each day, we question whether there will really be automatic execution on the NYSE in any meaningful way. Although we appreciate that specialists require time in which to report transactions, we cannot tell from the Proposal how much time will be required or allowed, how often shut-offs will occur, and, most importantly, whether these shut-offs will negatively impact orderly trading.

In general, our membership is in favor of as unfettered an approach toward auto-ex as possible, allowing free market forces of supply and demand to set stock prices through ongoing automated price discovery. Without further details and examples, we are uncertain as to whether all of the permissible or mandatory ways in which auto-ex can be shut-off are really necessary to a smoothly functioning hybrid model. Likewise, we question whether the triggers that shut-off auto-ex are truly in the best interests of investors, and/or in keeping with the Commission's desire that the NYSE become more automated. We cannot comfortably begin to consider these questions without additional clarification.

4. Clarification is also needed regarding the working of the Specialist Interest File, dealings by Specialists, and the working of the Broker Agency File.

Our members have raised numerous questions concerning the way in which specialists and floor brokers will interact with Direct+. It is not entirely clear how auto-ex and the auction market will function. Concerns have been voiced about the lack of transparency of the Broker Agency File. We have questions concerning who will be permitted to view the Broker Agency File - whether the specialist will be able to provide information in the Broker Agency File to people in the crowd to the potential disadvantage to electronic customers.

Our members are also concerned with the priority of orders under the Proposal. We believe that examples and clarification are necessary as to how priority and parity will work with respect to the Specialist Interest File and the Broker Agency File. For example completely concealed orders placed in the Broker Agency File apparently will have parity with customer orders. It seems as this may act as a disincentive for customers to place limit orders.

Linkage

Should the Commission approve the proposed amendments to Direct+, linkage of the NYSE to other markets becomes most critical.. As STANY noted in its comment letter dated June 30, 2004 to the Commission regarding Reg. NMS, linkage and access are the central components to an ideal NMS:

> "STANY believes that there would be no need for a market-wide uniform trade-through rule if issues of connectivity, access, and automatic execution are adequately addressed. If the National Best Bid and Offer ("NBBO") on every market is immediately accessible to "away markets" then, STANY believes broker-dealers' best execution obligations would be sufficient to protect the interests of all investors and ensure that superior prices are sought. Additional regulation, in the form of a trade-through rule, is both unnecessary and anticompetitive."

The Proposal calls for the NYSE to automatically route orders to other market centers when the National Best Bid and Offer is published by another market center in which auto-ex is available when the specialist has not systemically matched the prices associated with such bid or offer. Likewise, incoming ITS orders will be automated under the Proposal. While STANY is in favor of the NYSE's move to enhanced automation, we have concerns about connectivity and linkage to the NYSE. We question whether ITS, as it is today, is capable of handling the anticipated increased interaction with "away markets?" STANY would like to see the NYSE expound upon the feasibility of ITS handling this increased traffic, and we would like know whether the NYSE has a contingency plan in mind to ensure that adequate linkages will be in place to handle the enhancements to Direct+. Details regarding how, and through what facility, the NYSE anticipates that its auto-ex system will be linked to other markets centers would be helpful in accessing the potential impact of the amendments to Direct+ proposed by the NYSE.

Open Book

In 2002 the Commission approved the marketing by the NYSE of Open Book, the limit order book maintained by NYSE specialists. Heretofore, Open Book has been made available to the public on a delayed basis and the NYSE contracts with vendors prohibited the vendors from integrating or commingling Open Book data with data from other market centers. Given that the information supplied by the NYSE was not real-time, these contractual prohibitions upon vendors posed no hardship and had no real impact on investors and market participants.

The NYSE proposes to make Open Book data available on a real-time basis[5], a move that we fully support and applaud. Real-time data will present a useful tool to market participants and investors. However, the usefulness of this data will be diminished if vendors are prohibited from integrating and commingling NYSE bids and offers with bids and offers from other market centers. Contractual restrictions place a burden on investors, those acting on their behalf, and competing market centers, to look to multiple sources for real-time market data. These contractual restrictions hinder transparency and make compliance with best execution obligations more difficult.

The NYSE has positioned the proposed changes to Open Book as a fee structure issue, however, the implications of real-time trade data being disseminated in a restricted fashion go beyond a mere fee change. STANY respectfully requests that the Commission provide a full 90-day public comment on the NYSE's proposed changes to Open Book so that both the competitive and market structure impacts of a real-time NYSE Open Book can be explored.

Conclusion:

[5] Release No. SEC 34-50275; File No. SR-NYSE-2004-43, - Notice of Filing Rule Change Establishing Fees for Receiving NYSE Open Book on a Real-Time Basis

Direct+ Proposal

STANY commends the NYSE for the effort that it has undoubtedly put into the proposed amendments to Direct+. We support the NYSE's desire to more fully automate its market. We also appreciate the NYSE's desire to maintain its auction capabilities through creation of a hybrid market.

We are however concerned that, given the magnitude of the changes contemplated, the Proposal lacks clarity and completeness. Because of the significance potential impact of the changes, not only on the NYSE but also on all market participants and market centers, STANY respectfully requests that the Commission require the NYSE to supplement its Proposal with additional details, hard examples, and explanatory material. We further ask that the Commission subject the amended proposal to a full 90-day comment period, and public hearing if appropriate, prior to reaching a conclusion as to whether to approve the Proposal.

At the very least, STANY respectfully requests that the Commission defer granting permanent status to Direct+. Given the significance of the proposed amendments, we would suggest that any amended version of Direct+, be it the instant version, or a supplemental version, be the subject of a one-year pilot program similar to the original Direct+ pilot.

Open Book Proposal

STANY is pleased to see the NYSE offer Open Book data on a real-time basis. This move will provide investors and other market participants with valuable information. We would however like to see this information made available in such a way as to make it truly useful. As such, we would be in favor of vendors and purchasers of the Open Book data being able to integrate NYSE bids and offers with bids and offers of other market centers. STANY respectfully requests that the Commission submit the NYSE Open Book Proposal to a full 90-day comment period to enable interested and effected parties to evaluate its potential impact and offer comment on the proposal. The Proposal goes far beyond a simple fee request and merits consideration and comment.

STANY thanks the Commission for the opportunity to comment on these two important Releases and for the time and consideration given to our comments. The Officers and Directors would be happy to answer any questions or discuss these comments with the Commission.

Respectfully submitted,

Lisa M. Utasi
President

Kimberly Unger
Executive Director

cc: The Honorable William H. Donaldson
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Cynthia A. Glassman
The Honorable Harvey J. Goldschmid
Annette L. Nazareth, Director
Robert L. D. Colby, Deputy Director
John Thain, Chief Executive Officer
Robert G. Britz, President and Co-Chief Operating Officer
Catherine R. Kinney, President and Co-Chief Operating Officer