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February 24, 2005

Ms. Sharon Lawson  
Ms. Sonia Trocchio  
Securities and Exchange Commission  
Division of Market Regulation  
450 5th Street, NW  
Washington, DC 20549

Re: Public Comments Regarding SR-NYSE-2004-49  
Relating to Procedures with Respect to Late Filers

Dear Ms. Lawson and Ms. Trocchio:

We are writing in response to the two comment letters received by the Securities and Exchange Commission in response to SR-NYSE-2004-49, published in the Federal Register on January 14, 2005. The comment letters were submitted by Mr. James J. Angel and by the Nasdaq Stock Market ("Nasdaq").

Mr. Angel comments on his belief that the New York Stock Exchange (the "NYSE") should modify the ticker symbols of listed companies that are late in filing their annual reports with the Securities and Exchange Commission in order to provide investors with important protections. He also believes that the NYSE should apply the same ticker modification for companies that are late in filing their quarterly reports with the SEC.

The NYSE agrees that it is important to provide investors with appropriate notice that companies have failed to file their annual reports with the SEC in a timely manner. In point of fact, since July 2004, the Exchange has monitored and disseminated transparent information on companies that fail to satisfy the Commission's requirement to file their annual financials in a timely manner. In addition, the NYSE's financial compliance program monitors and identifies companies that are late in filing quarterly filings where the company has also failed to file its annual report with the SEC on time. We utilize multiple channels to distribute the information. First, the Exchange appends an ".LF" indicator in the financial status field of the company's ticker symbol and distributes that

information via the low speed ticker and through our data stream to market data vendors. The NYSE announces the appending and the removal of any indicator through ticker notices that are distributed to all member firms and data vendors and are available on the [nysenotices.com](http://nysenotices.com) site for reference by members and data vendors. Additionally, data vendors and subscribers have been actively encouraged to display this information. For example, the “.LF” indicator is currently displayed as a footnote by the media, including providers such as the Wall Street Journal and the Associated Press (which supplies its members with stock table data).

The NYSE also maintains an up to date list of companies that are late in filing their annual reports with the SEC on our website at [www.nyse.com](http://www.nyse.com). Additionally, each NYSE listed company has a unique data page on the site and, when applicable, this page indicates that the company is considered a late filer. In addition, to the extent that a company files an overdue annual report with the SEC, the NYSE neither removes the company’s “.LF” indicator nor deletes the company’s name from the late filer list posted to our website until such subsequent time as the company has filed all outstanding quarterly reports.

Currently, there are six companies listed on [www.nyse.com](http://www.nyse.com) as late in filing their required annual reports with the SEC. An additional two companies are listed that have filed their previously overdue annual reports but have not yet filed all of their outstanding quarterly reports. Of these eight companies, seven have announced that they will be restating their financial statements (an extended process) and one is still completing an investigation to determine whether a restatement is necessary.

In addition, our rules require companies who are late in filing their annual SEC financial filings to issue press releases providing investors with the status of their financial filings, the reason for the delinquency and (to the best of their ability) estimates with regard to their results. We actively encourage companies to continue such disclosure until such time as they have filed with the Commission. Any company that is more than five days late in filing will be added to the NYSE’s website posted late filer list. Proposed Section 802.01E sets forth additional procedures for market notification of late filings. As proposed, once the Exchange has identified that a company has failed to file a timely periodic annual report with the SEC by the later of (a) the date that the annual report was required to be filed with the SEC by the applicable form or (b) if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, the Exchange will notify the company in writing of its status. Within five days of receipt of this notification, the company will be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company fails to issue this press release in a timely manner, the Exchange will itself issue a press release stating that the company has failed to timely file its annual report with the SEC.

With respect to Mr. Angel’s suggestion regarding quarterly monitoring and identification, also suggested in the letter submitted by Nasdaq, please be advised that the NYSE is currently involved in conversations with the SEC regarding identification of those

companies that have failed to timely file quarterly reports with the SEC, regardless of whether such company has also failed to file its annual report on a timely basis.

In the letter submitted by Nasdaq, Nasdaq expresses the belief that the NYSE should not be allowed to “offer what is essentially a blanket nine months filing extension to delinquent issuers” and that the NYSE “should be required to adopt a more reasonable timeframe to respond to annual report filing delinquencies.” As noted above, only six NYSE-listed companies are currently delinquent in filing their required annual report with the SEC. All of these companies have stated that they will either need to restate their financial statements or are investigating whether a restatement is necessary, processes that take significant time to accomplish. Some of these companies are restating their financial statements in response to, or in conjunction with, an SEC investigation.

The NYSE hardly gives companies a “blanket nine months.” As the NYSE stated in SR-NYSE-2004-49, during the nine-month period from a company’s filing due date, our financial compliance and corporate governance groups are in frequent contact with the company and its advisors, monitoring the status of the filing, as well as the company’s compliance with the NYSE’s other qualitative and quantitative requirements. To the extent that the NYSE staff does not believe that it is appropriate to allow a company to continue to trade at any time during this period, the NYSE will move to suspend trading and delist the company. If the company fails to file the annual report within nine months from the filing due date, the Exchange may, in its sole discretion, allow the company’s securities to be traded for up to an additional three-month trading period depending on the company’s specific circumstances. If the Exchange determines that an additional trading period [of up to three months](#) is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Listed Company Manual. To date, the NYSE has suspended two companies within nine months from the annual report due date for a failure to file their annual reports. The NYSE has recently announced that it will be suspending a third company within twelve months from the due date. Should a company appeal the NYSE’s decision to suspend trading due to late filings, the company securities are not permitted to trade on the Exchange during the appeal process. As a result, we believe that our process is both thorough and transparent.

Please feel free to contact either Glenn Tyranski at (212) 656-5142 or Annemarie Tierney at (212) 656-5216, if you have any questions or need additional information.

Sincerely,

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