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Via e-mail to www.rule-comments@sec.gov

October 18, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Response to Comments on File Nos. S7-06-05 and SR-NYSE-2004-69 relating to the Trading of Unlisted Debt Securities on the Exchange's Automated Bond System®

Dear Mr. Katz:

The New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") is pleased to respond to comments received by the Securities and Exchange Commission (the "Commission") with respect to the above referenced filings.[1] Specifically, in File No. S7-06-05, the NYSE has requested pursuant to Section 36 of the Securities Exchange Act of 1934 (the "Exchange Act") that the Commission grant an exemption from the provisions of Section 12(a) of the Exchange Act to permit NYSE members and member organizations to trade certain debt securities that are not registered under Section 12(b) of the Exchange Act on the Exchange through its Automated Bond System® ("ABS"). In connection with the exemptive request, the NYSE also filed a proposed rule change (File No. SR-NYSE-2004-69) to set forth the requirements for trading unlisted debt securities on the Exchange (proposed NYSE Rules 1400 and 1401).

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[1] The Commission received nine comment letters with respect to File No. S7-06-05 (letters from The Bond Market Association (the "BMA"), William T. Dolan, Donald G. Dueweke, Howard M. Freidman, Robyn Greene, Esq., Denis P. Kelleher, Dennis J. Lehr, Joseph P. Riveiro and David Russell, Jr.), two comment letters with respect to File No. SR-NYSE-2004-69 (letters from BMA and Interactive Brokers LLC), and one comment letter from the National Association of Securities Dealers ("NASD") that relates to both files.

Request for Exemptive Relief (File No. S7-06-05)

All of those who commented on the NYSE's request for exemptive relief, other than NASD, supported the request. In addition to expressing its support, the BMA raised several issues that it believes should be addressed in connection with the Commission's action on the Exchange's request.

NYSE is a Registered Securities Exchange, not a Registered Broker-Dealer.

Most of the BMA's concerns appear to derive from an impression that the exemption would allow the Exchange to trade debt securities as a broker, in competition with other brokers, rather than as an exchange. To the contrary, since its inception in 1977, ABS has served as an Exchange system that matches orders brokers and dealers enter into the system. Under the terms of the exemption, ABS would continue to operate as an NYSE system for the execution and reporting of trades by NYSE members and by non-members that enter their orders through NYSE members.

The Exchange does not function as a broker. It neither makes recommendations regarding the purchase or sale of securities nor acts as agent for any person or entity in connection with purchases or sales through ABS. Rather, the Exchange provides a market venue for broker-dealers trading bonds, a venue that facilitates price discovery and maximizes transparency. All trading on the NYSE is governed by rules that the Exchange first files with the Commission in accordance with Section 19(b) under the Exchange Act and Commission Rule 19b-4. Debt securities are traded on the Exchange through ABS in accordance with rules that are uniform and transparent for all market participants and that are consistent with the provisions of Section 6(b) of the Exchange Act, including Section 6(b)(8)'s requirement that an exchange's rules impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[2]

Trades Executed on the NYSE Should not be Subjected to Redundant Reporting Requirements.

We agree with the BMA conclusion that broker-dealers should not be required to report NYSE ABS trades to TRACE. Aside from the obvious redundancy, there are significant qualitative differences between reporting under the NYSE's ABS rules and reporting

[2] While BMA claims that the Exchange is proposing to act as a broker, it is in fact those broker-dealers that operate OTC debt trading facilities that act as exchanges. The Commission has recognized this in adopting Regulation ATS, which applies to any organization that "[c]onstitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Exchange Act Rule 3b-16 . . . ."

under TRACE rules. Unlike TRACE reporting, NYSE ABS reports trades immediately upon their execution and with no markup or markdown incorporated. The NYSE also reports through ABS actionable real-time quotations with associated size; TRACE does not provide firm quotations. To require NYSE traders to report those locked-in ABS trades to TRACE would impose on them the hardship of having to convert NYSE ABS trade reports into the less transparent and redundant TRACE trade reports. To require them to also pay NASD for reporting NYSE trades to TRACE in the less investor-friendly format makes the TRACE reporting requirement even less palatable.[3]

To the extent NASD Rule 6240(e)(2) can be read to require the reporting of NYSE ABS trades to TRACE, we request the Commission to clarify in its exemptive order that NYSE members are not required to report to TRACE trades that take place on the NYSE through ABS**.**

Trading Symbol Protocols.

The BMA notes that the NYSE and TRACE use different trading symbol protocols, and suggests that symbol protocols should be uniform.

The Exchange views its symbol protocol as more user friendly than that of NASD. The symbol for the NYSE-listed stock that is associated with the bond serves as the basis for the NYSE ABS bond symbol. In addition, NYSE's symbol methodology provides the year of maturity of the particular issue traded – important information that TRACE symbols do not reveal. This is a more logical and less confusing symbol assignment methodology than that employed by TRACE. The NYSE also disseminates call notices to its ABS subscriber firms and appends a "called" indicator to the bond symbol. TRACE does not so indicate.

For all the foregoing reasons, the NYSE believes investors will be best served by NYSE's continued use of its existing trading symbol protocol.

SRO Status and Data Fees.

The BMA also expresses the concern that NYSE's status as a self-regulatory organization, and the ability to charge fees for Exchange trade data, gives the Exchange competitive advantages over brokers in the OTC market. With respect to fees, imposing a fee for the receipt and use of ABS trade data that the Exchange collects, processes and

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[3] Mandating the integration of ABS information with TRACE information is inappropriate because, for reasons such as the delayed nature of TRACE data, the absence of firm quotations and the other differences described above, the two sets of data are not comparable. However, combined presentations of NYSE ABS and TRACE data by vendors is not only possible, but is already occurring.

makes available allows the Exchange to comply with its obligation under Section 6(b)(4) of the Exchange Act, which requires the Exchange to allocate charges equitably among members, issuers and other persons using the Exchange's facilities. It follows an extremely longstanding practice of using market data as a source of revenues for funding the operations of securities exchanges.

In accordance with the statute and applicable SEC rules, the NYSE will establish bond data fees that are fair and reasonable and not unreasonably discriminatory. As required by Section 19(b) of the Exchange Act, the NYSE will file ABS data fees with the Commission on Form 19b-4, thereby subjecting their fairness and reasonableness to Commission oversight.

No "Special Status".

Regarding the NYSE's status as a self-regulatory organization, we believe that status conveys no competitive bond trading advantage to the NYSE. As the BMA letter notes, NYSE Regulation performs the NYSE's regulatory function and is separate from the Exchange's trading and other business functions. Independent NYSE Regulation personnel oversee NYSE trading through ABS and member compliance with applicable Exchange rules.

Furthermore, no "special status" will be associated with NYSE quotes through ABS**.** NYSE rules will not prohibit trading through an ABS quote, given the different reporting standards for ABS and TRACE. Members and non-members will have to assess their best execution obligations consistent with applicable law and Commission rules and policies.

The BMA asserts that the NYSE could disadvantage non-NYSE members by requiring them to become NYSE members or to acquire NYSE trading rights in order to trade on the NYSE through ABS. The BMA also claims that the NYSE's proposal creates a "closed" trading system, not available to non-NYSE members. To the contrary, the NYSE's facilities are open and will remain open to any market participant, directly as an NYSE member or indirectly through an NYSE member.

Market Structure Issues.

The BMA's letter also raises certain other issues for Commission consideration. First, the BMA asks whether or not the Commission intends to grant other exchanges the ability to trade debt securities on an unlisted basis. The BMA also asks whether the Commission intends to allow other exchanges to trade the exempt securities traded on the NYSE. The Exchange's exemption application is an attempt to remedy the regulatory anomaly that limits the bonds that can be traded on an exchange while permitting non-exchange facilities to trade corporate bonds without limitation. The NYSE has no objection should the Commission determine to allow other exchanges to trade debt securities on the same basis as the NYSE.

Second, the BMA expresses its concern that wholly owned subsidiaries of listed equity issuers would no longer be able to benefit from the blue sky exemption provided by Section 18 of the Securities Act of 1933 if their securities were traded on the NYSE without being listed there. The BMA requests the Commission to take any action necessary to enable such NYSE-traded securities to benefit from the blue sky exemption. The Exchange strongly supports the BMA's request.

Proposed ABS Rules (File No. SR-NYSE-2004-69)

Of the three comment letters that relate to the proposed changes to NYSE's ABS rules, only NASD's letter raises issues that require a response.[4] As discussed below, we believe that the NASD's comments are without merit and would severely hinder the opportunities the proposed exemption will provide for full, clear bond price transparency for individual bond investors.

The NYSE is not an OTC market.

NASD states that by seeking an exemption to trade unlisted securities, the NYSE is seeking to establish an NYSE execution facility in the OTC market. NASD asserts that transactions in unlisted bonds effected on NYSE through ABS should be subject to NASD's statutorily mandated oversight as the OTC market regulator under Section 15A of the Exchange Act. In addition, NASD's letter states that since the bonds that the NYSE will be trading pursuant to the proposed exemption will not be registered under the Exchange Act, trades on the Exchange must be reported to TRACE.

These arguments are without merit. Indeed, if trading in unregistered securities on the NYSE constituted OTC trading, we would not need an exemption from Section 12(a) in the first place. Section 12(a) provides in relevant part that it shall be unlawful for any "member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange."

As the Commission noted in its release adopting Regulation NMS, "[a]s a national securities association, the NASD is subject to different regulatory requirements than a national securities exchange. It is responsible for regulating the OTC market (i.e., **trading by broker-dealers otherwise than on a national securities exchange**)."[5]

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4 The BMA's letter asks for more time to comment and the Interactive Brokers letter supports the proposal.

5 See Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495 (June 29, 2005).

(Emphasis added). However, because NYSE is a registered national securities exchange and ABS is a NYSE execution system, it is self-evident that trades through ABS are trades that are made **on** a national securities exchange. Indeed, NYSE Rule 86 states that "[t]ransactions effected through ABS are Exchange Contracts, and bids and offers displayed through ABS [are] deemed to be bids and offers made on the Floor." There is simply no such thing as an off-exchange bond transaction on the NYSE through ABS.

NASD also contends, without support, that "[a] **defining** hallmark of a registered national securities exchange is that its members may **only** trade on it those securities that are Exchange Act registered." (Emphasis added). In fact, the NYSE has long traded securities that are not Exchange Act registered, including Fannie Mae, Freddie Mac, Sallie Mae, TVA, World Bank and U.S. Treasury securities.[6] Transactions on the NYSE in these unregistered securities have been subject to the NYSE's oversight (and not NASD oversight) for many years, despite the fact that the securities are not registered.

We also note that in November 1994, the Commission amended certain Exchange Act rules to reduce regulatory distinctions between exchange-traded debt securities required to be registered under Section 12 of the Exchange Act and bonds traded over-the-counter for which such registration is not required. In doing so, the Commission acknowledged that "regulatory distinctions may have unnecessarily and unintentionally affected the structure and development of the debt markets."[7]

Differences in Reporting Practices.

NASD is concerned that the potential information fragmentation created by the NYSE-TRACE reporting dichotomy could "undermine" corporate bond market transparency and that "investors would find themselves making investment decisions with incomplete pricing information." NASD adds that such reporting is essential for a "complete" picture of trading in these issues for surveillance purposes.

As described above, NYSE quotes and trades reported through ABS convey more complete information to the market and investors than reporting in TRACE. It is also reasonable to expect that vendors will increasingly include both TRACE and NYSE reported price data in their services in response to customer demand. As we have noted above, mandating redundant reporting of NYSE trades to TRACE will provide no benefits but will increase costs for broker-dealers and investors. That being said, the NYSE would be receptive to coordinating surveillance with the NASD, as appropriate.

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[6] Securities of these issuers are available for trading on NYSE through ABS and, except for the World Bank and Treasury issues, also trade on the NYSE equities floor.

[7] See Securities Exchange Act Release No. 34-34922 (November 1, 1994), 59 FR 55342 (Nov. 7, 1994).

Please feel free to contact either Annemarie Tierney at (212) 656-5216 or me at (212) 656-2062 with any questions or comments.

Sincerely,

Mary Yeager
Assistant Secretary