

**Mary Yeager**  
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Via email to [www.rule-comments@sec.gov](mailto:www.rule-comments@sec.gov)

November 18, 2005

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

RE: SR-NYSE-2005-63 (Moratorium on Registered Competitive Market Maker and Competitive Trader Registration)

Dear Mr. Katz:

The New York Stock Exchange (the "Exchange" or "NYSE") is writing to respond to a letter by Mr. George Brunelle,<sup>1</sup> on behalf of the firm of Alan L. Sarroff L.L.C., ("Sarroff L.L.C."), sent in reaction to the Exchange's 19b-4 filing, SR-NYSE-2005-63,<sup>2</sup> proposing a moratorium on Registered Competitive Market Maker ("RCMM") and Competitive Trader ("CT") registrations.

Mr. Brunelle contends that the Exchange should not have submitted this rule filing for immediate effectiveness as it prevented the public an opportunity to comment. The letter also suggests that the Exchange has predetermined the conclusion of the RCMM and CT study discussed in the filing and that the Exchange has already decided what role

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<sup>1</sup> See George Brunelle, Attorney, Brunelle & Hadjickow, to Jonathan Katz, Secretary, SEC, dated October 6, 2005.

<sup>2</sup> See Form 19b-4 filed September 22, 2005, SR-NYSE-2005-63, (not yet published in the Federal Register; available on the Exchange website, nyse.com).

RCMMs should have in the future.<sup>3</sup> The letter also states that the moratorium will adversely affect the business of Mr. Sarroff's and other RCMMs.<sup>4</sup>

A proposed rule filing may be requested to take immediate effect pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4(f) thereunder.<sup>5</sup> When a filing is made pursuant to these provisions the SEC still conducts a complete and thorough review of the matters discussed in the filing and solicits comments on it for 21 days after it is published in the Federal Register. Thus, the public's right to comment on the filing is preserved.

The Exchange notes that the federal securities laws do not mandate the creation or addition of RCMMs and CTs. NYSE rules that allow for the registration of RCMMs and CTs were originally proposed by the Exchange and subsequently approved by the Securities and Exchange Commission. The Exchange maintains that a reasonable interpretation of such rules allows for a moratorium on the addition of new RCMMs and CTs while it reviews whether changes, if any, are warranted on what future or additional roles they should have as the Exchange's market evolves.

In fact, no determination has been made as to the appropriate role RCMMs and CTs should have in the future. As stated in our filing, the Exchange plans to review the current rules applying to RCMMs and CTs in the context of the proposed Hybrid Market<sup>6</sup> environment in order to determine what changes, if any, would be appropriate for the best functioning of the Exchange market.

The Exchange will consider the information provided in Mr. Brunelle's letter and its attachment in its review. Additionally, the Exchange will promptly file for approval with the Commission any changes to the existing rules that the Exchange determines are

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<sup>3</sup> Id. at 2.

<sup>4</sup> Id. at 1, 3, 5-6.

<sup>5</sup> See 15 U.S.C. 78s(b)((3)(A); 17 CFR 240.19b4(f).

<sup>6</sup> See Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) (Amendment No.1 to SR-NYSE-2004-05); Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (Amendment Nos. 2 and 3 to SR-NYSE-2004-05); (The Exchange withdrew Amendment No. 4 and replaced it with Amendment No. 5); Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR-NYSE-2004-05). See also Amendment No. 6 file September 16, 2005, and Amendment No. 7 filed October 10, 2005, to SR-NYSE-2004-05.

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warranted upon completion of its review. The review is currently estimated to be completed on or about June 30, 2006.

The Exchange notes that during this moratorium, RCMMs and CTs will be able to continue conducting their business pursuant to existing rules. The moratorium will not prevent RCMMs and CTs from hiring non-RCMM and non-CT staff.

At the time the moratorium took effect there were three pending RCMM applications. Two applicants were allowed to proceed and are now active RCMMs. No action was taken with respect to the third applicant as a result of a failure to fulfill the registration requirements.

If you have any questions regarding the foregoing, please feel free to contact Nancy Reich, Vice President, Market Surveillance, at 212-656-2475, Donald Siemer, Director, Market Surveillance, at 212-656-6940, or David Matta, Principal Rule Counsel, at 212-656-4717.

Sincerely,

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

Mary Yeager  
Assistant Secretary