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NYSE

November 18, 2005

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

Re: SR-NYSE-2004-70 (Amendments to NYSE Rule 104.10(11) to Require that Specialists Must Yield to Later-Arriving DOT® Orders)

Dear Mr. Katz:

The New York Stock Exchange (the "Exchange") is writing in connection with the Commission's solicitation of comments in Securities Exchange Act ("Exchange Act") Release No. 34-51048 (January 18, 2005) on the above-captioned filing. Specifically, we are responding to comments by George Rutherfurd on June 15, 2005 (the "June 15 Letter"). The June 15 Letter was the third in a sequence of comment letters by Mr. Rutherfurd, and addressed points made by the Exchange in a letter to the Commission on June 7, 2005 (the "June 7 Letter"), which itself was responding to Mr. Rutherfurd's first two comment letters.

The purpose of this letter is to correct a statement in the Exchange's June 7 Letter, and to address a point raised in Mr. Rutherfurd's June 15 Letter.

First, as Mr. Rutherfurd points out, Scenario 1 and accompanying discussion in the June 7 Letter was set out incorrectly, and should have read as follows:

> Scenario 1: Specialist Trading for the Dealer Account
>
> The specialist decides to sell to an order at the bid from his own account. Consistent with Exchange rules, he orally offers the stock at .51 but attracts no buyers. He consummates a transaction as principal at .50
>
> . . .
>
> In either of these scenarios, the proper price for the consummated transaction is .50, since the specialist has established that price as being the best available. In

Scenario 1, the specialist does so by determining that there are not other willing buyers at .51. In Scenario 2, he determines that there are no buyers at .51 and therefore, there can be no argument that the sell limit order was entitled to a better price than .50.

The Exchange regrets the error, which resulted from an editing mistake rather than the reasons that Mr. Rutherfurd ascribes. But in any event, the *point* of Scenario 1 remains unchanged –before his proprietary transaction, the specialist determines that .50 is the best price available in the market at that moment. In the circumstances, it makes no substantive difference that the specialist was acting on his own behalf in determining the best available price rather than on behalf of the later-arriving sell order; the best available price at the moment the later-arriving sell order entered the Display Book® would still have been .50. Thus, the later-arriving sell order would not be disadvantaged by being substituted for the specialist in the orally-consummated transaction.

Second, in his initial comments, Mr. Rutherfurd argued that by requiring specialists to substitute the later-arriving sell order for the specialist's own participation in a trade, the proposed rule would disadvantage the later-arriving sell order by preventing it from interacting with even-later-arriving interest on the opposite side of the market. In response, the Exchange disagreed that the later-arriving sell order was being disadvantaged: to be "disadvantaged", the order would have to be deprived of something to which it was otherwise entitled, and since it was not *entitled* to interact with the even-later-arriving buy order on the other side of the market, it is not disadvantaged by being substituted into the orally-consummated transaction. We elaborate this point further, below:

As you may recall, the example from Mr. Rutherfurd's letter, to which the Exchange was responding, assumed that the market was .50-.60, 1000 x [unstated]. The specialist orally consummated a transaction with the bid at .50. Before he reported the trade, a DOT® order to sell at the market arrived. Thereafter, autoquote published a new bid of .55 for 1000 shares.

As noted in the June 7 Letter, the proposed rule would require the specialist to yield to the later-arriving sell order. Since that order is substituted and executed automatically (that is, the specialist has no discretion whether or not to execute it), it follows that a subsequent bid is not relevant to the execution of that order, just as it wouldn't be relevant to any other completed order. In this way, the proposed rule effectively mimics what would happen in an electronic market: the sell market order would automatically trade with the bid at .50 regardless of what came after and the new bid at .55 would trade with whatever interest remained after the initial transaction. [We also note that although the proposed rule mimics one aspect electronic trading, it in fact could produce a better result for the sell market order over a pure electronic transaction, since the order would receive whatever price improvement the specialist had negotiated.]

By contrast, Mr. Rutherfurd's scenario would, in effect, hold the later-arriving sell order open until the next bid came in, a benefit to which the order would not ordinarily be entitled. To illustrate the problem with his scenario, consider what would be the result if, instead of arriving close in time to each other, the even-later-arriving buy order arrived five, ten or twenty seconds (or longer) after the later-arriving sell order, with no other intervening interest. This would naturally raise the question of how long the specialist should wait before substituting the later-arriving order into the orally consummated transaction. Would one second be too short? Would thirty seconds be too long? The proposed rule resolves that ambiguity by establishing a bright-line standard – assuming that the later-arriving order is capable of taking the specialist's position in the transaction orally-consummated transaction, the specialist must yield.

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If you have any questions regarding the foregoing, please feel free to contact Daniel M. Labovitz, Director, Market Surveillance, at (212) 656-2081; Donald Siemer, Director, Market Surveillance, at (212) 656-6940; or Jerry Reda, Director, Market Surveillance, at (212) 656-5354.

Sincerely yours,

cc: Kimberly Allen