

Mary Yeager
Assistant Secretary



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February 14, 2007

Via email to rule-comments@sec.gov

Nancy M. Morris
Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Reference: File No. S7-21-06

Dear Ms. Morris:

New York Stock Exchange LLC (“Exchange” or “NYSE”) is pleased to have the opportunity to respond to the Securities and Exchange Commission’s (“Commission”) request for comments on the proposed amendments to Rule 200 and 201 of Regulation SHO and Rule 10a-1 under the Securities Exchange Act of 1934 (“Exchange Act”), as discussed in Release No. 34-54891.

Removing Price Restrictions on Short Sales

The Exchange supports the Commission’s proposal to eliminate tick restrictions on the execution of short sales. As the Commission notes, the potential risk to the markets posed by short selling has been reduced through market efficiencies, effective surveillances, and rule-making – along with the continued threat of prosecution, under the general anti-fraud and anti-manipulation statutes of the federal securities laws, for those abusive short selling schemes that do occur – short sale price restrictions have become not only unnecessary, but also their continued maintenance will serve only to interfere with the mechanisms of an efficient market.

We further support removing restrictions on the execution of short sales because in many active stocks sales and quotations can change multiple times in a single second. These rapid changes can make it far too difficult for a short seller to determine when the appropriate tick or bid, as the case may be, has been reached to effect the short sale. Removing price restrictions will provide relief to market participants dealing with the practical difficulties of engaging in legitimate short selling strategies in active securities.

Finally, the NYSE believes that all equity markets should be regulated equally. It is inappropriate that the federal securities law, through the application of Rule 10a-1, requires trading of NYSE-listed securities to be held to a different standard than those listed on other markets. Nevertheless, rather than advocate the imposition of a uniform price restriction test across all markets to address the disparity, the Exchange supports the Commission's proposal to remove all restrictions on the execution prices of short sales. The practical effect of this proposal will be to level the playing field in the area of short sales and establish a more consistent and uniform regulatory regime across all markets.

Prohibition against a Self-Regulatory Organization from Having a Price Test

The NYSE agrees that the Commission should not allow self-regulatory organizations ("SRO") generally to adopt their own short sale price tests, with an important exception: SROs should be able to determine if price tests are appropriate during unusual market declines. The Exchange remains concerned about unrestricted short selling during periods of unusually rapid and large market declines, the effects of which could not be measured or analyzed as part of the Commission's pilot suspending the provisions of Rule 10a-1 and any price test of any SRO, as such a decline did not occur during that period. Accordingly, the NYSE submits that it would be prudent to permit markets to propose rules to be applied in this specific situation should they deem it appropriate, subject to the Commission's SRO rule-making and approval process.¹

However, under normal market conditions, individual markets should not be able to impose their own price tests. To do otherwise would be to undermine the goal of uniform and consistent regulation of short sales and confuse investors and other market participants. Nevertheless, should the Commission deem it appropriate that markets be permitted to adopt and maintain their own price tests during normal market conditions, then the Exchange believes that the Commission should also provide SROs with the flexibility to choose whether or not to adopt and/or maintain a price test and, where a

¹ Likewise, SROs should be permitted to maintain existing rules consistent with this concept. *See, e.g.,* NYSE Rule 80A(a) (requiring the entry of any index arbitrage order to sell any component stock of the S&P 500 Stock Price IndexSM with the instruction "sell plus" on any trading day when the NYSE Composite Index® declines below its closing value on the prior trading day by at least the "two-percent value," as calculated according to the methodology found in NYSE Rule 80A.10).

market chooses to do so, the particular price test that the SRO determines to be most appropriate for its marketplace.

Making Public Information, and Filing Periodic Reports, Pertaining to Short Selling Transactions

The Commission should not require the markets to collect and make publicly available trading data on each executed short sale reported by the SRO to a securities information processor. Collecting and producing such information, as has been done during the pilot, has proven to be both costly and time-consuming. Moreover, the stated purpose for publicly releasing such data during the pilot – *i.e.*, encouraging independent researchers to study the pilot’s effects – has already been successfully accomplished, as evidenced by the academic studies published and public roundtable held concerning the results of the pilot data. Indeed, the Commission has relied, to a certain extent, upon those very same studies and the roundtable discussion in making the proposed amendments; thus, there does not appear to be a compelling reason to have the SROs continue to bear the burden of compiling and releasing publicly additional short sale trading data beyond the expiration date of the pilot.

For much the same reason, the SROs should not be required to submit periodic reports regarding the effects of the removal of price tests. Whereas compiling and publishing short sale execution data in and of itself has been expensive and burdensome to the Exchange; requiring markets to not only continue to compile such data, but also to perform analyses and prepare detailed reports in connection with it at regular intervals, would dramatically exacerbate those costs.

Specialists Receiving Information on Whether a Sell Order is Long or Short

In the event price test restrictions are eliminated, the Exchange believes it necessary that the overall short interest in a security, as well as information on whether a particular sell order introduced to the Exchange is long or short, continue to be transparent intra-day to specialists in the securities in which they are registered. With the implementation of the NYSE Hybrid MarketSM the basic responsibility of the specialist – to help ensure that the markets in the securities in which the specialist is registered are fair, orderly, and operationally efficient – has not changed, and this remains true whether that responsibility is being performed electronically or manually. Implicit in the specialist’s role is the obligation to maintain markets that are characterized by regular, reliable operation, with adequate price continuity, in which price movements are accompanied by appropriate volume, and unreasonable price variations between sales are to be avoided. To accomplish this, specialists are expected, among other things, to provide liquidity as principal when such transactions are necessary to minimize an actual or reasonably anticipated short-term imbalance between supply and demand.

For a specialist, making the correct determination regarding the necessity of a dealer transaction at any given moment includes an understanding of the general market conditions in the particular security, including the actual or reasonably anticipated needs of the market. The intra-day short interest position in a security as well as whether particular orders are long or short are critical pieces of information in the overall mix of factors that combine to form the “market” in that security. Absent its availability, specialists would be unfairly required to perform their obligations and make determinations, including whether or not to provide liquidity, based on incomplete supply and demand information. This will result only in poorer overall market quality.

Please feel free to contact Craig P. Hammond, Managing Director, Office of the General Counsel, at 212.656.2661 should you have any questions concerning the above.

Sincerely,

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

Mary Yeager

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth
Commissioner Kathleen L. Casey
Erik Sirri, SEC Director, Division of Market Regulation
Robert L.D. Colby, SEC Deputy Director, Division of Market Regulation
James A. Brigagliano, SEC Associate Director for Trading Practices and
Processing, Division of Market Regulation