NYSE Euronext

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September 14, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Mutual Recognition on the Basis of Substituted Compliance

Dear Ms. Morris:

NYSE Euronext greatly appreciates the opportunity to comment on the concept of Mutual Recognition on the Basis of Substituted Compliance, which the Securities and Exchange Commission (the "Commission") is currently considering pursuing.

NYSE Euronext

NYSE Euronext became the parent company of NYSE Group and Euronext and each of their respective subsidiaries on April 4, 2007, upon the consummation of their business combination.

NYSE Group operates and regulates two securities exchanges: the NYSE and NYSE Arca, Inc. NYSE Group is a leading provider of securities listing, trading and related information products and services. NYSE Group was formed in connection with the merger of the NYSE and Archipelago, which was completed on March 7, 2006.

The NYSE is the world's largest and most liquid cash equities exchange. The NYSE provides a reliable, orderly, liquid and efficient marketplace where investors meet directly to buy and sell listed companies' common stock and other securities. For 214 years, the NYSE has facilitated capital formation, serving a wide spectrum of participants, including individual and institutional investors, the trading community and listed companies. As of December 31, 2006, 2,713 issuers, which include operating companies, closed-end funds and exchange traded funds ("ETFs"), were listed on the NYSE, and the NYSE's listed operating companies represented a total worldwide market capitalization of over $25.1 trillion. During 2006, on an average trading day, approximately 1.67 billion shares, valued at over $63.0 billion, were traded on the NYSE. The NYSE operates a hybrid market in which orders are electronically transmitted for execution. Specialists on the trading floor are charged with maintaining fair, orderly and continuous trading markets in specific stocks. Floor brokers act as agents on the trading floor to facilitate primarily large or complicated orders.

NYSE Arca operates the first open, all-electronic stock exchange in the United States and has one of the leading market positions in the trading of exchange-listed securities and ETFs. NYSE Arca is also an exchange for trading equity options. Through NYSE Arca, customers can trade approximately 8,875 equity securities and over 152,000 option products. NYSE Arca's trading platforms link traders to multiple U.S. market centers and provide customers with fast electronic execution and open, direct and anonymous market access. The technological capabilities of NYSE Arca's trading systems, combined with its trading rules, have allowed NYSE Arca to create a large pool of liquidity that is available to customers internally on NYSE Arca and externally through other market centers. During 2006, on an average trading day, over 822 million shares, valued at over $28.6 billion, were traded through NYSE Arca's trading platforms.

Euronext was the first genuinely cross-border exchange organization. Following the merger of the Paris, Amsterdam and Brussels exchanges in 2000, Euronext acquired the London-based derivatives market, the London International Financial Futures and Options Exchange ("LIFFE"), and merged with the Portuguese exchange, BVLP, in 2002. As a result, Euronext now operates regulated cash and derivatives markets in Belgium, France, the UK (derivatives only), the Netherlands and Portugal. Euronext has integrated its constituent markets based on a horizontal market model designed to generate synergies by incorporating the individual strengths and assets of each local market. This business model covers technological integration, the reorganization of activities into cross-border, streamlined strategic business units and the harmonization of market rules and the regulatory framework. Since its creation, Euronext has fostered the consolidation of European financial markets by integrating local exchanges across Europe in order to provide users with a single market that is broad, highly liquid and cost-effective.

Introduction

In light of the wide scope of NYSE Euronext's activities, both in terms of international reach and breadth of product offerings, the rapid implementation of the concept of Mutual Recognition by the Commission is extremely important to NYSE Euronext for its own business activities, for its member brokers and dealers and for the investing public around the world who use its facilities and products. In particular, our experience in listing non-U.S. issuers, providing services to global investors, including U.S. and non-U.S. investors and working with non-U.S. exchanges and regulators equips us very well, and perhaps uniquely, to address the concept of a system of Mutual Recognition.

NYSE Euronext believes that it is very important for the Commission to move quickly to implement Mutual Recognition, thereby permitting access by non-U.S. markets and exchanges from recognized jurisdictions into the United States, to permit offers and sales to, and the execution of transactions with, U.S. investors without Commission registration under the Securities Exchange Act of 1934.[1] We recommend that the system of Mutual Recognition adopt an "admitted to dealing" approach, which would allow trading without full listing or Exchange

[1] As part of this approach, securities of non-U.S. issuers must be permitted to be offered and sold without registration under the Exchange Act. Registration of offerings of such issuers under the Securities Act of 1933 is discussed elsewhere in this letter.

Act registration or reporting. At the same time, Mutual Recognition will open non-U.S. markets on a reciprocal basis in those same jurisdictions, thereby permitting U.S. exchanges to access investors there. First, Mutual Recognition will increase global investment opportunities for investors in the United States and around the world. There is strong and growing interest in global investing by all investors, from the largest institutional investors to retail investors. However, even at a time when global markets have become a reality, fragmentation of trading markets and of clearance and settlement systems impedes the ability of all but the largest investors to invest globally and increases the costs of global investing.

Second, Mutual Recognition will be beneficial for issuers. In particular, it will broaden the markets in which their stocks can trade and thus could lead to increased liquidity and decreased costs of capital.

Third, as the August 17 letter of the Federation of European Securities Exchanges ("FESE") to Commission Chairman Cox on this subject notes, this is the most propitious time to date to pursue an initiative in this area, since a number of exchanges and regulators world-wide are considering Mutual Recognition as a next step in constructive globalization with maximum benefits for investors and markets.

Finally, moving quickly and decisively will provide the Commission with the best opportunity to play the most significant leadership role in the global implementation of Mutual Recognition. In many respects this is a decision point for the Commission in determining whether to take a strong pro-active global leadership position or to be in a more reactive position. Given the size and importance of the U.S. markets, there will of course in all events be an important role for the Commission in determining the path of development of Mutual Recognition. However, markets will become increasingly global in any event and we believe that by taking the initiative now the Commission can maximize its impact and act most decisively to benefit U.S. investors and markets.

Advantages of Mutual Recognition

We firmly believe that pursuing Mutual Recognition is the most effective next step in fostering global markets, and in particular in increasing opportunities for investors most expeditiously while continuing to provide necessary and adequate investor protection.[2] To continue exclusively along a "national treatment" model is to continue to deny global and cross-border investment opportunities that are in ever-greater demand. To allow unfettered global cross-border access to investors is to give too short shrift to investor protection concerns. Mutual Recognition will allow the development of global investment opportunities and also promote increased global competition, including in the crucial areas of clearing and settlement, while at

[2] NYSE Euronext understands that the Commission is examining the concept of Mutual Recognition in the contexts of both trading markets, including exchanges, and broker-dealers. While this letter directly addresses Mutual Recognition in the context of markets and exchanges, NYSE Euronext also strongly favors the Commission pursuing Mutual Recognition in the context of broker-dealers. The competitive environment in which to consider Mutual Recognition for broker-dealers is quite different, given the existence of large globally integrated multi-service financial institutions. However, a Mutual Recognition approach to broker-dealer regulation should foster increased global investment opportunities for investors, especially investors falling below the category of the largest institutional investors, and should also lead to greater competition.

the same time allowing the Commission and other regulators to make judgments about the overall comparability of regulatory structures in protecting investors and markets.

The Commission's leadership role and the global success of Mutual Recognition depend crucially on the conception of the framework for Mutual Recognition and the resulting rollout. Real success will require a framework that provides for evaluation that is both effective and rapid. That will in turn require the following:

- As the Commission's statements to date suggest, a top-down risk-based methodology for evaluating other markets and regulatory structures that focuses on evaluation of regulatory principles and objectives rather than a bottom-up detailed evaluation of rules; and

- An initial focus on a selection of jurisdictions that is broad enough to allow a fair implementation and evaluation of the success of the Mutual Recognition approach and small enough to permit rapid implementation.

Number of Jurisdictions

While the desirability of rapid effective action is clear, NYSE Euronext believes that it is absolutely crucial that the Commission not select a mere one or two jurisdictions as an initial step. Such a narrow focus could cause serious global competitive harm in light of the size of the U.S. market. Moreover, an excessively narrow focus will not place the Commission in the global leadership position that we believe is important; it could even produce a backlash in other jurisdictions that could consider moving in other directions.

We would therefore recommend that the Commission start with a selection of jurisdictions that lands in a comfortable middle range. We believe that one appealing approach would involve first looking at a selection of jurisdictions in the European Union. The EU has been in ongoing discussions with the Commission on a broad range of subjects at both the Commission and staff level for a considerable period of time. The cooperative framework that is already in place with the EU would greatly facilitate an initial implementation of a system of Mutual Recognition. We understand that addressing a system of Mutual Recognition with the 25 member states of the EU may well exceed the Commission's appetite and even capacity for initial implementation. As a way of reducing the initial exercise to involve a more manageable number, we believe that it would perhaps be appropriate to consider those jurisdictions within the EU that have already entered into formal cooperative arrangements with the Commission through arrangements regarding cooperation in enforcement matters or arrangements regarding cooperation in regulatory matters.[3] We note that these jurisdictions would include those represented in Euronext's College of Regulators, all of which have evidenced a strong interest in international cooperative arrangements.

Suggested Successful Framework

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[3] We would refer to the Commission's website at http://www.sec.gov/about/offices/oia/oia_cooparrangements.htm#enforce for a list of those jurisdictions.

In addition to the number of jurisdictions, there are a number of other crucial points for the Commission in devising a framework that will lead to a successful implementation of the Mutual Recognition approach. We believe that the most critical factors in devising a successful framework include the following:

- As mentioned above, the methodology for assessing comparability should be top-down, risk-based and focus on regulatory objectives and principles. We will address issues involving the comparability analysis in more detail below.

- The role of disclosure in alerting investors to the Mutual Recognition approach and the nature of the comparability assessment should be considered. We therefore believe that the Commission should adopt an approach to investor protection that uses disclosure to investors as a complement to an analysis of overall comparability (as they do already when allowing the offer and sale of equity options listed on approved foreign markets to qualified institutional buyers ("QIBs") but requiring a disclosure document to be furnished to each such QIB prior to any such offer and sale). In particular, comparability of objectives and principles, combined with disclosure to investors of the basis of a system of Mutual Recognition, appears to us to be a better and more workable approach than reliance on an analysis that evaluates comparability of detailed regulations and outcomes. The latter approach would be too cumbersome and slow and will result in the benefits of Mutual Recognition to investors and markets not being widely achieved. We believe that clear disclosure to investors who are thereby informed of the basis of the system of Mutual Recognition would provide adequate investor protection as well as fuller benefits of Mutual Recognition.

- The Commission's decisions regarding the framework for Mutual Recognition should be taken against the backdrop of related decisions regarding the inclusiveness of the Mutual Recognition system. For example, the framework could well be different depending on which investors are included in the system, which issuers are included in the system, and which products are included in the system. And while NYSE Euronext favors a framework for Mutual Recognition that is as inclusive as possible, we also support an incremental approach if it would permit rapid implementation of an initial, less inclusive program followed, where justified, by a later, more inclusive expansion of that program.

    - The Commission's concerns regarding the balance of advantages to investors vs. investor protection could be lessened if, as a first step, the Mutual Recognition framework permitting access to investors in the United States limited securities to those of non-U.S. issuers. Investors in the United States have adequate access to U.S. securities without recourse to a system of Mutual Recognition. Including U.S. securities in the system of Mutual Recognition therefore does not seem to be a first priority.

    - There have been suggestions that the Commission, or at least the Commission staff, is considering limiting the Mutual Recognition framework to large institutional investors, such as QIBs, which are specified types of institutions with more than $100 million of assets invested in enumerated classes of

securities.[4] NYSE Euronext believes that would be a serious mistake. A principal purpose of Mutual Recognition is to open global investment opportunities to investors. QIBs are the class of investors that least need Mutual Recognition. They already generally have access to global investment opportunities. Adoption of Mutual Recognition, with the effort entailed, makes sense only if the system is made available to investors other than the largest institutional investors.

- The greatest investor benefits of Mutual Recognition in terms of increasing global investment opportunities will accrue to retail investors. NYSE Euronext therefore feels strongly that markets permitted to operate in the United States (or elsewhere) under a system Mutual Recognition should be open to all investors. We also recognize, however, as noted above, the crucial need for rapid action to implement Mutual Recognition. It was apparent from the Commission's June 12 Roundtable on Mutual Recognition that extension of a Mutual Recognition system to all retail investors could be controversial. Under those circumstances, we would support, as a first step, a system of Mutual Recognition that did not extend to full retail participation. However, in that case we would seek to have consideration of full retail participation as a quick follow-on after the Commission has had an opportunity to observe the operation of a system Mutual Recognition.

- As noted above, in order to make Mutual Recognition worthwhile, the first step, if it does not extend to all retail investors, should extend well beyond QIBs. We would recommend that the Commission adopt the standard of "qualified purchaser" under the Investment Company Act of 1940, which would permit participation by individuals with $5 million of investments.

- If the class of investors initially permitted in the system is limited as described above, then the class of issuers permitted should be broad. In order to capture appropriately the benefits of EU home country regulations, we would propose securities traded within the EU definition of "regulated markets."[5]

- Because of the benefits to retail investors, we believe that a system of mutual recognition should be extended to retail investors generally as a second step. However, we realize that the Commission recognizes additional investor protection considerations with retail investors. These regulatory considerations could be addressed if the class of issuers available in the case of full retail participation, at least as a first step, was limited to a class of larger and seasoned issuers. Such an approach would lessen the risks surrounding comparability of disclosure requirements because large seasoned issuers, both U.S. and non-U.S., face market discipline to conform to international disclosure standards because they are generally followed by

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[4] See Securities Act of 1933 Rule 144A(a)(1).

[5] "Regulated markets" are defined in the Markets in Financial Instruments Directive ("MiFID"), European Parliament and Council Directive 2004/39/EC, art. 4, O.J. (L 145) 1, 10.

substantial numbers of institutional investors and analysts. As the Commission recognized in its Securities Offering Reforms adopted in June 2005,[6] this broad market following and resulting discipline can be an important additional driver effectively forcing larger and well followed issuers to conform to international market standards of disclosure. The Commission adopted a definition of "well-known seasoned issuer" to embody this concept. We would therefore recommend that issuers initially available to retail investors be limited in a fashion similar to that set forth in the definition of "well-known seasoned issuer." For example, a one-year reporting history and the preparation of one annual report, plus a global market capitalization of at least $700 million or the equivalent could be an appropriate standard.

- Finally, because of the intense product focus of today's global markets, a system of Mutual Recognition should accommodate the products traded on global markets, including derivatives and exchange-traded funds ("ETFs"). The Commission staff has already issued a series of no-action letters permitting the offer and sale into the United States to QIBs of equity options (including index options) listed on non-U.S. exchanges.[7] We believe that it is important to preserve those precedents as part of an initial system of Mutual Recognition. ETFs, while not the subject of current letters, are tied to baskets or indices in much the same way as some equity options. We also believe that the availability of these products should be extended to all of the initial class of investors to whom a system of Mutual Recognition would provide access, and not just QIBs.[8]

Comparability Analysis

As discussed at the Commission's June 12 Roundtable, one of the most important and challenging tasks facing the Commission will be to devise a system of analysis of comparability. Based on the experience of NYSE Euronext in dealing with a number of regulators (in Europe and elsewhere) who have needed to undertake such reviews, either to allow screen access or for

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[6] See Securities Offering Reform, SEC Release No. 33-8591, 70 Fed. Reg. 44722, 44726 (July 19, 2005).

[7] See, e.g., letter from Elizabeth K. King, Associate Director, Division of Market Regulation (the "Division"), Commission, to David Yeres, Clifford Chance, dated August 13, 2007; letter from Elizabeth K. King, Associate Director, Division, Commission, to J. Eugene Marans, Cleary, Gottlieb, Steen & Hamilton, dated July 27, 2005; letter from Elizabeth K. King, Associate Director, Division, Commission, to Michael M. Philipp, Katten Muchin Zavis Rosenman, dated September 24, 2004; letter from Elizabeth K. King, Associate Director, Division, Commission, to Derek Oliver, Director of Legal Affairs, EDX London Limited and OM London Exchange Limited, dated October 29, 2003; letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jane Kang Thorpe, Orrick, Herrington, & Sutcliffe, dated December 6, 1999; letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Richard P. Streicher, Loeb & Loeb LLP, dated July 27, 1999; letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Nancy Jacklin, Clifford Chance, dated July 23, 1999; letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Nancy Jacklin, Clifford Chance, dated March 6, 1996.

[8] The regulatory framework would also have to provide an exemption from Securities Act registration for these options, since the offer and sale of exchange-traded options is viewed as an issuance by the exchange or clearing corporation under the Securities Act.

more general access and/or promotion arrangements, we would respectfully suggest the following as possible guidance for carrying out this analysis:

- The central assumption of Mutual Recognition is that a regulator will be able to rely substantially on the supervisory and regulatory arrangements in another jurisdiction in relation to activity conducted from there. There needs to be acceptance that – for historical, institutional or other reasons – various aspects of regulation may be conducted differently but be equally effective as the domestic arrangements with which they are being compared.

- As noted above, the analysis should operate on a top-down basis starting with regulatory objectives and principles. The first questions should focus on whether there are comparable regulatory objectives of the regulatory systems in question. In other words, there should be no expectation that a line-by-line comparison of the two regulatory regimes will necessarily show exact equivalence even though, taken as a whole, comparability has been established.

- The process for establishing comparability of regulatory standards will inevitably be a mixture of objective facts and informed professional and regulatory judgments. The objective aspects of the process will relate to, for example, the legislation in place in the jurisdiction in question, the powers of the regulator, the role of other state agencies with responsibility for maintaining market integrity (e.g. central bank, public prosecutor) and so forth. The aspects involving judgment will relate to an assessment of how effective the regulator and, where applicable, other state agencies are in practice and, more generally, the reputation of that jurisdiction.

- The starting point for reviewing the jurisdiction may involve confirmation that the jurisdiction has implemented in full all of the IOSCO principles of securities regulation. The regulator itself would be able to provide a description of relevant legislation and arrangements, its own role and its relationships with the central bank and the finance ministry (both of which may have responsibilities for financial markets). The Commission may also be able to obtain information regarding the regulatory framework from other areas of government, such as the State Department and the embassy in the relevant jurisdiction.

- In assessing the effectiveness of arrangements on an exchange, there needs to be a standard against which to assess them. This is likely to be a high level version of what is required of domestic exchanges. To take a UK analogy to the process, in the UK the obligations imposed on exchanges are set out in legislation (the "recognition requirements") and FSA guidance on how they interpret those requirements. Non-European exchanges seeking to operate in the UK on the basis of their home state authorization would therefore be required to demonstrate, inter alia, that investors are afforded protection equivalent to that which they would be afforded if the exchange in question was required to comply with the recognition requirements.

Future Steps

As we have pointed out in a number of places above, we believe rapid implementation is crucial and in the best interests of the Commission. As a result, we believe that there are a number of important actions that might nonetheless be deferred until a later step. These would include the following:

- As discussed above, if the initial implementation of a system of Mutual Recognition does not extend to all retail investors, then a high priority would be to do so at the earliest opportunity. Full retail participation is where the greatest benefits lie.

- Given the product focus today's global markets, future steps should include ongoing attention to accommodating the system of Mutual Recognition to the scope of products traded on the various exchanges and markets involved. This may require coordination between the Commission and the Commodity Futures Trading Commission.

- Securities are now commonly offered to QIBs without Securities Act registration under Rule 144A under the Securities Act. Just as U.S. investors that are not QIBs want access to greater global investment opportunities, they want greater access to securities offerings. A Mutual Recognition approach, combined with the fact that disclosure standards of many markets are comparable to SEC disclosure standards under Form 20-F, would provide a significant possibility to extend the opportunity to participate in offerings without Securities Act registration.[9] The class of issuers and the class of investors to whom this relaxation should extend should be the same as that used for Mutual Recognition. The same classes should be employed because the same considerations regarding comparability of disclosure regulation are involved as are involved as part of the process of implementing Mutual Recognition.[10]

- If foreign exchanges are permitted to operate in the United States under a system of Mutual Recognition, it becomes crucial that U.S. exchanges be permitted to trade securities of the same categories of issuers for the same categories of investors as the foreign exchanges. Delaying such a step would give foreign exchanges a competitive advantage over U.S. exchanges. Given the regulation of U.S. markets and exchanges by the Commission, such a step would not decrease investor protection. This step, together with opening access to foreign markets, would foster competition in what would become increasingly global trading activity. In particular, opening these trading opportunities could provide competition that would be in the best interests of U.S. investors. U.S. and foreign exchanges would compete to provide the best environment for execution. They could also compete, in what may be an even more important area for developing

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[9] See Edward F. Greene, *Beyond Borders Part II: A New Approach to the Regulation of Global Securities Offerings* (May 2007), *available at* http://www.sechistorical.org/collection/papers/2000/2007_0501_GreeneBeyondT.pdf.

[10] We understand of course that regulatory considerations involved in implementing a system of Mutual Recognition for exchanges and markets go beyond issuer disclosure in a number of respects. However, insofar as considerations of issuer disclosure are relevant, they should be the same as those that would be involved in considering whether to permit unregistered offerings in the United States based on home jurisdiction disclosure requirements.

efficiencies in the global securities markets, to provide the best clearance and settlement. Such a step would make the US regulatory framework a market leader in globalization. [11]

NYSE Euronext very much appreciates the opportunity to have provided its views regarding the important priority of the Commission's development of a system of Mutual Recognition. We would be pleased to answer any questions or provide further information regarding our views to the Commission or the Commission staff. Please contact Rachel F. Robbins at 212.656.2222 or rrobbins@nyse.com to pursue any of these matters further.

Very truly yours,

John A. Thain
Chief Executive Officer
NYSE Euronext

cc: Securities and Exchange Commission
Hon. Christopher Cox, Chairman
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Annette L. Nazareth, Commissioner
Hon. Kathleen L. Casey, Commissioner

Securities and Exchange Commission – Division of Market Regulation
Mr. Erik R. Sirri, Director

Securities and Exchange Commission – Division of Corporation Finance
Mr. John W. White, Director

Cleary Gottlieb Steen & Hamilton LLP
Mr. Alan L. Beller

[11] Consideration will have to be given to whether this extension of trading should take the form of "unlisted trading privileges" or an alternative method of listing. In any event, as recommended above for securities covered by the system of Mutual Recognition, this step would have to be structured in such a way that the securities in question would be "admitted to dealing", but would not be fully listed on the U.S. exchange in question, and would in all events not be required to be registered under Section 12(b) or 12 (g) of the Exchange Act. Such a requirement would trigger periodic reporting requirements under the Commission's rules and would also trigger requirements to comply with the Sarbanes-Oxley Act of 2002. One purpose of the Mutual Recognition approach is to permit access for more U.S. investors to more non-U.S. securities of issuers that do not register those securities under the Exchange Act.