affirmative obligation is codified in Rule 104.10(2), which provides that, "In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as specialist engage to a reasonable degree under existing circumstances in dealings for his own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated."

The affirmative and negative obligations constitute the foundation of the NYSE's regulation of specialists. They preclude a specialist from trading when there is sufficient buying and selling interest to maintain a fair and orderly market, and require the specialist to trade to minimize short-term disparities in supply and demand. In the context of trading by a specialist while an affiliate is engaged in a distribution of a specialty stock, the negative obligation would bar trading by a specialist to influence the price of the stock when the market is otherwise fair and orderly; the affirmative obligation similarly restricts the ability of a specialist to influence a stock's price by requiring the specialist to react to short-term imbalances in supply and demand, and trade on whichever side of the market will be contra to the overall market trend. Thus, the affirmative and negative obligations significantly inhibit the specialist's ability to effect transactions for market conditioning purposes, which is the type of transaction Rule 10b-6 is intended to prohibit.

We are enclosing as an attachment several pages from the Exchange's Floor Official Manual which discuss the affirmative and negative obligations in detail, and which cross-reference these obligations to specific restrictions on specialist's trading as codified in various provisions of Rule 104.

Rule 98 Information Barriers

As noted above, this request for exemptive relief requires the specialist and affiliated organization to have Exchange approval under NYSE Rule 98 and its Guidelines. NYSE Rule 98 affords exemptive relief for entities in a control relationship with a specialist organization from restrictions in NYSE Rule 104, 104.13, 105, 113.20 and 460.10 that would otherwise be applicable to such entities' transactions in securities in which the specialist organization is registered, or to business transaction with the issuers of such securities. Pursuant to Rule 98 and the implementing guidelines promulgated thereunder, the specialist organization and the affiliated entity must be operated as separate and distinct organizations, and information barriers must be established that place substantial limits on access to, and communication of, trading information, including positions and strategies, between the two organizations. Rule 98 exemptive relief is conditioned on the organizations' receiving prior written approval from the Exchange. The functional separation procedures that must be implemented pursuant to Rule 98 preclude the transfer of market-sensitive information between a specialist organization and an affiliate, and minimize potential conflicts of interest whereby one entity might otherwise

be inclined to take market action for the purpose of benefiting the other entity.

The Exchange notes that the procedures specified in Rule 98 are consistent with procedures pertaining to the establishment of information barriers, monitoring of such barriers, and notice (in the case of Rule 98, to the Exchange) as described in the Commission's recent exemptive letter to CS Holding (TP File No. 94–267).

Through Exchange Rule 342 (Supervision), each member organization afforded exemptive relief under Rule 98 is required to monitor the procedures adopted to comply with the Guidelines. The Exchange inspects its member organizations afforded such relief on an annual basis for adherence to these supervisory requirements.

Exchange Surveillance

Since the adoption of Rule 10b-6 in 1955, the Exchange has made substantial investments in sophisticated surveillance procedures, including comprehensive audit trail submissions by member firms, and extensive use of software analytics designed to assist in reviewing this and other data available for such surveillance. For example, the Market Analysis and Reconstruction System (MARS) enables Exchange analysts to retrieve and review trading information dynamically and, utilizing information in the Exchange's existing data base, enables these analysts to review trading for anomalies using many combinations of analytical criteria.

The Exchange will conduct surveillance and reviews of specialist trading activity when an affiliated organization is involved in trading activities in a specialty stock subject to Rule 10b–6 or Rule 10b–13 that are specifically designed to highlight such trading for any possible manipulative intent.

Conditions for Exemptive Relief From Rule 10b-6 and Rule 10b-13

The Exchange believes that exemptive relief for a specialist organization affiliated with a participant in a distribution that has obtained exemptive relief pursuant to Rule 98 (an "Affiliated Specialist" and an "Affiliated Broker-Dealer") would be appropriate under the following conditions:

- 1. Issuer Qualification Standards. The security being distributed, or any security of the same class or series as those securities, or any right to purchase such security, or any security that is the subject of a transaction to which Rule 10b–13 is applicable ("Subject Security") must qualify for the two business day cooling-off period specified in paragraphs (a)(4) (v), (xi) and (xii)(A) of Rule 10b–6.
- 2. Establishment of Information Barriers. The Affiliated Specialist and the Affiliated Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer. The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.
- 3. *Monitoring of Information Barriers.*During the timeframe commencing with the

two business day cooling-off period until the distribution participant has completed its participation in the distribution ("Rule 10b–6 Covered Period"), the Affiliated Specialist and the Affiliated Broker-Dealer must conduct a daily review of transactions in the Subject Securities effected by the Affiliated Specialist and the Affiliated Broker-Dealer, respectively, and by Affiliated Purchasers, as that term is defined in Rule 10b–6(c)(i). Any irregular trades by the Affiliated Specialist, the Affiliated Broker-Dealer, and any Affiliated Purchaser, or suspected breaches of the Information Barriers, must be reported immediately to the NYSE.

- 4. Notice of Breach. Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b–6 Covered Period, it must provide immediate notice to the NYSE of such occurrence. Upon request of the SEC Division of market Regulation (the "Division"), the Affiliated Specialist and/or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding that breach.
- 5. Annual Compliance Review. a. As part of the annual review specified in Exchange Rule 342.30, each Affiliated Specialist and each Affiliated Broker-Dealer must include a review, conducted by a person independent of the business line being reviewed, of its compliance during the calendar year with the terms of this exemption, including its operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement ("Statement") that it did not participate in any distributions of a Subject Security during the calendar year if such is the case. Upon a request from the Division, such reviews, management reports, and statements must be supplied to the Division within 15 days of the request.
- b. Prior to relying on this exemption, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the review noted in paragraph (a) above. The explanation of the review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the title of the person or group who will conduct the review.
- 6. NYSE Surveillance. The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b-6 Covered Period, including on-line surveillance of trading by the Affiliated Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b-6 Covered Period and for two business days thereafter. With respect to transactions subject to Rule 10b-13 (the "Subject Offer"), the NYSE will review all trading by the Affiliated Specialist for the period commencing with public announcement of the Subject Offer, and reconstruct all Affiliated Specialist trading on a daily basis