from the period two business days prior to the commencement of the Subject Offer until the conclusion of the Subject Offer, to detect possible market manipulation and to monitor compliance by the Affiliated Specialist with its obligations under NYSE rules.

7. Notice of Participation. Affiliated Broker-Dealer must notify the NYSE of their participation in any distribution during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemption granted herein. At a minimum, the Affiliated Broker-Dealer must provide the NYSE advance notice, on the business days prior to commencement of the Rule 10b–6 cooling-off period, of the dates of the Rule 10b–6 Covered Period and notice of the completion of the distribution.

8. Recordkeeping. A. All documents required under this Exemption shall be kept for a period of not less than two years. Reports of annual compliance reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws, or the rules of the Exchange.

9. Disclosure. The Affiliated Broker-Dealer shall include in the "Plan of Distribution" section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemption granted herein. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemption granted herein.

10. Analysis. The NYSE will provide the Division with a written analysis of the operation of the exemption granted herein for the 18-month period commencing from the date exemptive relief is granted.

In all other respects, the Affiliated Specialist and its Affiliated Broker-Dealer must comply with the provisions of Rules 10b-6 and 10b-13. No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers may be effected for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of the exemption herein must comply with the antifraud and anti-manipulation provisions of the Securities Exchange Act of 1934 particularly Section 9(a), Section 10(b), and Rule 10b-5 thereunder.

We have enclosed a description of surveillance of specialist trading activity when an affiliate is engaged in a distribution of a specialty security. Confidential treatment is requested pursuant to the Freedom to Information Act and the applicable SEC rules thereunder. Such treatment is requested on the grounds, among others, that the information submitted may contain confidential financial data of private parties as well as sensitive surveillance data,

disclosure of which may significantly impair the effectiveness of the Exchange's selfregulatory mechanism. Accordingly, should any request be made for disclosure of these materials, or their contents, we ask that you notify us of this fact immediately, giving us an opportunity to interpose our objections.

Sincerely,

James E. Buck,

Senior Vice President and Secretary. July 31, 1995.

Mr. James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y. 10005.

Re: Application of Rules 10b–6 and 10b–13 to New York Stock Exchange Specialists File No. TP 94–293

Dear Mr. Buck: In regard to your letter dated April 28, 1995, as supplemented by conversations with the staff, this response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter. Each defined term in this letter has the same meaning as defined in your letter unless otherwise noted herein. Response:

Subject to certain exceptions, Rule 10b-6 under the Securities Exchange Act of 1934 ("Exchange Act") prohibits persons participating in a distribution of securities and their "affiliated purchasers," as defined in paragraph (c)(6)(i) of Rule 10b-6 ("Affiliated Purchaser"), from bidding for or purchasing, or inducing others to bid for or purchase, such securities, or any security of the same class and series as those securities, or any right to purchase any such security ("Subject Securities"), until they have completed their participating in the distribution. Paragraph (a)(4)(xi) ("exception ix") of Rule 10b-6 excepts from this prohibition bids for or purchases of the Subject Securities effected by an underwriter, prospective underwriter, or dealer, and their affiliated purchasers, prior to two or nine business days before the commencement of offers or sales of the security to be distributed ("cooling-off period"). Once the cooling-off period commences, Rule 10b-6 requires the distribution participant and its affiliated purchasers to cease bidding for or purchasing the Subject Securities until the distribution participant has completed its participation in the distribution ("Rule 10b-6 Covered Period"), as set forth in paragraph (c)(3) of Rule 10b-6.

Because a New York Stock Exchange, Inc. ("NYSE") specialist organization ("Affiliated Specialist") affiliated with a distribution participant would be an Affiliated Purchaser, such Affiliated Specialist would be required

to suspend its specialist activities in a Subject Security during the applicable cooling-off period until any affiliated brokerdealer ("Affiliated Broker-Dealer") has completed its participation in the distribution.

Rule 10b-13, among other things, prohibits a person making a cash tender offer or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security, otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration ("Rule 10b-13 Covered Period"). Rule 10b-13 applies to the dealermanager of the offer (and affiliates of the dealer-manager, including an Affiliated Specialist) because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives.

Currently, to ensure compliance with Rule 10b-6(a)(4)(xi), the NYSE requires the Affiliated Specialist to suspend its specialist activities in a Subject Security during the applicable cooling-off period specified in Rule 10b-6, until the Affiliated Broker-Dealer has completed its participation in the distribution. Specifically, NYSE Rule 460.20 provides that the Affiliated Specialist must 'give up the book'' (i.e., suspend its specialist activities) to a specialist organization unaffiliated with any distribution participant, which then assumes all specialist responsibilities under NYSE rules. When the Affiliated Broker-Dealer has completed its participation in the distribution, the Affiliated Specialist may regain the "book" and resume its specialist activities in the Subject Security.

On the basis of your representations and the facts presented, particularly the affirmative and negative obligations that govern specialist trading under NYSE Rule 104; the provisions of NYSE Rule 98 that require information barrier policies and procedures that segment information between the Affiliated Specialist and its Affiliated Broker-Dealer; and NYSE surveillance procedures designed to detect specialist activity that may condition the market for a Subject Security during a distribution, and without necessarily concurring in the analysis in your letters, the Commission hereby grants exemptions from Rules 10b-6 and 10b-13 to Affiliated Specialists and their Affiliated Broker-Dealers to permit the Affiliated Specialists to continue to bid for and purchase Subject Securities as a specialist during the Rule 10b-6 Covered Period and the Rule 10b-13 Covered Period, as applicable, subject to the following conditions:

- 1. Scope of the Exemptions. These exemptions apply to mergers, exchange offers, and firm commitment, fixed price offerings that are distributions for purposes of Rule 10b–6, and tender and exchange offers subject to Rule 10b–13. The Subject Securities must have a minimum price of five dollars per share and a minimum public float of 400,000 shares, as computed in accordance with Rule 10b–6(c)(7).
- 2. Establishment of Information Barriers. The Affiliated Specialist and the Affiliated

¹The letter supersedes our letter dated September 15, 1992, which granted exemptions from Rules 10b–6 and 10b–13 under the Securities Exchange Act of 1934 ("Exchange Act") to permit specialists affiliated with member broker-dealer organizations to continue to function as specialists in their respective speciality securities in connection with certain mergers and tender or exchange offers in which the affiliated broker-dealer participates in a distribution or acts as dealer-manager of a tender or exchange offer.