November 14, 2006

Ms. Nancy Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Release No. 34-54615; SR-NYSE-2006-037**
New York Stock Exchange Rule 86 - NYSE Bonds

Dear Ms. Morris:

The Securities Industry and Financial Markets Association ("Association")[1] appreciates the opportunity to comment on the above-referenced proposal (the "Proposal"), submitted by the New York Stock Exchange ("NYSE" or "Exchange") to replace its Automated Bond System with a new trading technology system named "NYSE Bonds." The Association is supportive of the NYSE's proposal to modernize its technology and rules for the trading of bonds. However, the Association has a number of concerns regarding the Proposal, including, principally, NYSE's plans regarding NYSE Bonds market data. The Association also notes some concerns regarding the trade reporting and non-member access aspects of the Proposal and the operation of the proposed "clearly erroneous" rule for trade adjustment and nullification.[2]

1. Market Data

Currently, the NYSE provides real-time quote and trade information generated by the ABS system only to subscribers. The Proposal indicates that NYSE Bond users

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[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. The Association's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. The Association works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] Certain of these comments have been expressed previously by the Association. *See* Letter from Lynnette Kelly Hotchkiss of the Association (formerly known as The Bond Market Association) to Jonathan Katz dated August 15, 2005. (The "Prior TBMA Letter") commenting on the NYSE's request for exemptive relief from Section 12(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), Exchange Act Release No. 34-51998 (July 8, 2005), 70 Fed. Reg. 40748 (July 14, 2005). The Prior TBMA Letter is available at http://www.sec.gov/rules/exorders/s70605/lkhotchkiss081505.pdf.

will continue to receive a real time "bond data feed" containing the best priced orders on the book in time sequence as well as transaction reports. The Proposal also indicates NYSE's intention to sell the NYSE Bonds data feed to non-subscribing market participants and market data vendors "who agree to the Exchange's terms."[3] The Association has several concerns regarding the market data to be generated by NYSE Bonds.

Data Ownership

The Association previously expressed its views regarding the anticompetitive nature of the NYSE's ability to assert a property interest in quote and trade information for fixed income securities – particularly as NYSE is proposing to extend the use of its trading platform to a much broader range of unlisted bonds.[4] Self-regulatory organizations ("SROs") have historically claimed ownership of quote and trade information for equity securities, often premised, in part, upon the regulatory mandates imposed upon exchanges under the Exchange Act and the Commission's Rules thereunder in respect of certain securities.[5] However, the Association believes that it would be contrary to public policy to establish a similar precedent in the fixed income markets.

In the fixed income markets, brokers sell quote and trade data directly to third parties for distribution. The Association believes that the current competitive market for the distribution of quote and trade information benefits investors and the market as a whole by encouraging innovation, thereby, increasing efficiency and containing costs.

The Association is concerned that the NYSE's competitive advantage as the exclusive processor of quote and trade data for trading on NYSE Bonds will allow it to charge monopolistic prices. Brokers may be forced to purchase the NYSE's market data in order to fulfill regulatory obligations, and high market data costs will increase a broker's cost of operation and transaction costs for investors. The Association believes that the entities or individuals submitting the orders used to generate the quote and trade data should be the rightful owners. As such, the NYSE should distribute the data free of charge.[6] Alternatively, the Commission should cap the fees that the NYSE charges for the market data products at the cost of dissemination.[7]

Terms of Data Distribution

In addition to the question of cost, a further related incident of NYSE's control of the NYSE Bonds market data is its ability to dictate the terms under which data may be used or redistributed. The Proposal fails to describe the restrictions to be imposed upon persons who contract to obtain NYSE Bonds market data from the NYSE.

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[3] Proposal at p. 15.
[4] *See* Prior TBMA Letter at p. 3.
[5] *See, e.g.,* Exchange Act Rule 603.
[6] *Id.* at pages 3-4.
[7] We believe the interpretation of "cost" should be narrowly interpreted so as not to include any costs that cross-subsidize the Exchange's equity floor operation or regulatory costs.

The Association is concerned that the NYSE may apply prohibitive restrictions on the dissemination of NYSE Bond system information similar to those used for other NYSE data products. For example, several years ago, Bloomberg L.P. successfully challenged certain prohibitive restrictions employed by the NYSE with regards to market data vendors' ability to integrate the NYSE Liquidity Quote with data from other markets.[8] Similarly, the NYSE initially subjected market data vendors seeking to redistribute NYSE OpenBook (a book containing order information for equity securities) to onerous restrictions on a market data vendor's ability to integrate the OpenBook information with other markets. The Association does not believe that the NYSE should be allowed to apply such restrictions on the display or the distribution of NYSE Bond data feed. The Commission should ensure that the NYSE files any such restrictions (including all forms of contract pertaining to subscription for and use of NYSE Bonds market data and any other terms to be imposed by the NYSE) in an amended Proposal so that commenters may appropriately respond.

2. Trade Reporting; Regulatory Jurisdiction

The Proposal does not address whether users will have any trade reporting obligations under the Exchange's rules or under the rules of the National Association of Securities Dealers, Inc. (the "NASD"). The NASD has filed with the Commission a proposed rule change (the "TRACE Exemption Proposal") pursuant to which NASD would exempt from TRACE reporting, for a "pilot" period of 2 years, reporting requirements for TRACE-eligible debt securities that are traded on the NYSE, provided that the transactions are executed on the NYSE and reported to the NYSE in accordance with NYSE trade reporting rules and the trade data is disseminated by the NYSE.[9] The availability of the proposed exemption is conditioned upon the execution by the NASD and the NYSE of a data sharing agreement. Although the TRACE Exemption Proposal should, if adopted, alleviate some burdens on dual NYSE-NASD members during the pilot period, a number of questions remain unanswered. At a practical level, what requirements, if any, will users of NYSE Bonds have to report trades effected through NYSE Bonds or will the system report trades automatically? Furthermore, will there be a qualifying data sharing agreement in place between NYSE and the NASD prior to the commencement of trading on NYSE Bonds? In addition, what will happen at the end of the pilot period?

From a broader perspective, the TRACE Exemption Proposal presumes that the NASD would have regulatory jurisdiction over trading activity within NYSE Bonds. Although the Association is mindful that the NASD needs to have all relevant market

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[8] *See* Securities Exchange Act Release No. 34-49076 (January 14, 2004).

[9] SR-NASD-2006-110 (September 19, 2006). The NASD's TRACE rules already contain an exemption from trade reporting requirements for TRACE-eligible securities that are *listed* on a national securities and reported to such exchange (and certain other conditions are satisfied). *See* NASD Rule 6230(e)(2). However, this exception does not technically cover securities that are traded, *but not listed*, on a national securities exchange. The TRACE Exemption Proposal would, if adopted, bridge this gap for a proposed pilot period.

data in order to surveil and regulate the *over-the-counter* market for fixed-income securities, and that it has general jurisdiction over certain conduct of its member firms and their associated persons, the Association is concerned that the NASD would seek to assert jurisdiction over trading activities effected on and through the systems of a national securities exchange. As articulated in prior letters, the Association believes rationalization of rules of self-regulatory organizations is beneficial to the market, and therefore, that duplicative and potentially inconsistent regulation should not be permitted.[10] The Association believes that the SROs and the SEC should clarify the respective regulatory jurisdiction of the NASD and the NYSE in respect of NYSE Bonds trading, so as to ensure that firms are not subject to unnecessary examination burdens, inconsistent and/or duplicative requirements or multiple layers of fees for their activities.

3. Clearly Erroneous Rules

The Proposal includes a provision allowing trades deemed to be "clearly erroneous" to be broken or modified.[11] The Association believes that this proposed rule is vague and may allow legitimate and proper executions to be "busted" or adjusted. The Association recommends that the NYSE modify the Proposal to stipulate objective standards (e.g., price thresholds, minimum size or dollar parameters, etc.) for the determination of clearly erroneous trades.[12] Absent such objective standards, clearly erroneous rules can be (and, in the past, have been) used by exchanges and members as a means to discriminate against undesired orders or disfavored trading strategies or firms, and can be a vehicle for unlawful denials of access. Establishing clear standards would mitigate the risk that arbitrary practices would evolve or that inappropriate decisions would be made to bust or adjust legitimate trades for improper reasons. In addition, the Association requests clarification on how the NYSE intends to apply the clearly erroneous procedures outside of business hours, and how users can request a review of transactions outside of core trading hours.

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The Association appreciates this opportunity to address the issues raised by the NASD's Proposal. If you have any questions concerning these comments, or would like

[10] *See* Letter from Mary Kuan of the Association (formerly known as The Bond Market Association) to Nancy Morris dated May 4, 2006 commenting on the proposed rule change to apply NASD Rule 2440 and IM-2440 relating to fair prices and commissions to exchanges, Exchange Act Release No. 34-53562 (March 29, 2006), 71 Fed. Reg. 64822 (April 4, 2006). The letter is available at http://sec.gov/comments/sr-nasd-2006-005/srnasd2006005-2.pdf.

[11] *See* Proposal at pp. 12-13.

[12] We note that some exchanges have adopted such objective standards. *See, e.g.,* NASDAQ Rule 11890(a)(2).

to discuss our comments further, please feel free to contact me at 646.637.9220 or via email at mkuan@sifma.org.

Sincerely,

Mary C.M. Kuan
Vice President and
Assistant General Counsel