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Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609

Re: Proposed NYSE and NASD Rule Changes Relating to the Prohibition of Abuses in the Allocation and Distribution of Shares in Initial Public Offerings ("IPOs") – File Nos. SR-NYSE-2004-12; SR-NASD-2003-140

Dear Mr. Katz:

I am writing to express my strong support for the adoption of rules that will protect investors by prohibiting the improper allocation of initial public offering ("IPO") shares.

As you know, in April 2003 my office, the SEC, NYSE, NASD and NASAA entered into a five-year agreement with 10 major investment banks (the "Voluntary Initiative") imposing landmark restrictions on the allocation of IPO shares. This agreement was reached in the wake of investigations that uncovered widespread abuses in the allocation of such shares based on improper favoritism to executives of corporate clients.

In particular, the investigations revealed that favored executives and directors of companies with whom investment banks did or hoped to do business were routinely allocated shares in "hot" IPOs at the expense of other investors. This permitted the executives to reap profits not available to other investors, and undermined public confidence in the integrity of the IPO process. It also had an adverse effect on the relationship between investment banks and their corporate clients, and between the executives and the corporations they had a fiduciary duty to serve.

The Voluntary Initiative sought to terminate these practices by imposing several new restrictions on the IPO allocation process. These included, inter alia: (1) a flat prohibition against firms allocating securities in a "hot" IPO (*i.e.* an IPO that trades at a premium in the secondary market when the secondary market begins) to any executive officer or director of a U.S. public company or a public company for which a U.S. market is the principal equity trading market; (2) a prohibition against allocating securities in any IPO in exchange for (or for the purpose of obtaining) investment banking business; and (3) a prohibition against investment banking personnel having input into a firm's allocation of securities in an IPO to brokerage accounts of individuals, except to convey allocation requests made in writing by the issuer or other sellers and to engage in discussions regarding the general plan of distribution.

As a result, I support the effort of the SEC, NASD and NYSE to craft permanent restrictions for IPO allocations, as the proposed rules do in many areas. However, I recommend that the rules be amended to include two important restrictions found in the Voluntary Initiative but absent from the rules in their current form.

First, as noted above, the Voluntary Initiative included a flat ban on allocation of securities in a "hot" IPO to the account of a company executive officer or director. While I recognize that the proposed rules regarding all IPOs (whether "hot"or not) have strengthened and made more easily enforceable the Voluntary Initiative's restriction against any IPO allocations made in exchange for (or for the purpose of obtaining) investment banking business, I believe that "hot" IPOs require the stronger prohibition that was contained in the Voluntary Initiative. With their promise of near certain profit, "hot" IPOs create the greatest opportunity for abuse and the greatest temptation to evade restrictions. In my view, they require the strong, bright line restriction contained in the Voluntary Initiative.

Second, the Voluntary Initiative prohibited investment banking personnel from having input into the firm's allocation of IPO securities to individuals. The proposed rules are silent on this subject. We believe any input beyond that permitted by the Voluntary Initiative is unnecessary, and that permitting such input creates a vehicle for re-emergence of the abuses the rules seek to end.

In sum, I applaud the SEC, NYSE and NASD for moving forward with rules that will help prevent abuses in the allocation and distribution of IPO shares. The investing public deserves permanent rules that incorporate or strengthen the restrictions set forth in the Voluntary Initiative.

Sincerely yours,

ELIOT SPITZER
Attorney General