THE New York Stock
Exchange

January 4, 1979

Mr. George A. Fitzsimmons
Secretary
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

FILE NO. S7-744

Dear Mr. Fitzsimmons:

The New York Stock Exchange, Inc. ("NYSE") submits this response to the letter dated November 10, 1978, from Milton H. Cohen of Schiff Hardin & Waite to the Securities & Exchange Commission ("the Commission"), opposing the NYSE's proposal to enter the options trading market. Mr. Cohen's letter followed a submission of September 22, 1978, on behalf of Chicago Board Options Exchange ("CBOE"), which also opposed the NYSE's proposal to enter that market, now dominated by CBOE and the American Stock Exchange.

Mr. Cohen's letter reiterates many of the arguments initially advanced by CBOE. However, Mr. Cohen appears to retreat from CBOE's earlier position that antitrust analysis and case law should be brought to bear on the Commission's deliberations. This is apparently in response to the NYSE's showing in its letters to the Commission of September 22, 1978 and November 29, 1978, that the antitrust laws clearly favor new entries into markets. Instead, Mr. Cohen now concentrates on the claim that the Securities Acts Amendments of 1975 permit the Commission to bar the NYSE's entry upon a lesser showing than would be required under the antitrust laws. Mr. Cohen's only attempt to make this lesser showing is by charging that the NYSE's allegedly predominant position in the trading of equity securities has been achieved and maintained through "anticompetitive" practices and by then arguing that permitting the NYSE to commence options trading would extend those alleged practices to a new arena.

Mr. Cohen offers no evidence to support the contention that NYSE's position in the equities markets has resulted through anti-competitive practices. Indeed, while NYSE rules have contained regulations and restrictions on various matters, the same is true of other securities exchanges. (See, for example, CBOE Rule 6.49, restricting off-floor trading in CBOE listed options). All such rules, whether of NYSE or other exchanges, have either been mandated or permitted by the Commission after full and continuing consideration in the exercise of its powers and duties under the Securities Exchange Act of 1934 ("the Exchange Act"). Section 19(b) of the Exchange Act vested in the Commission the authority to order changes in the rules of a securities exchange when necessary or appropriate to achieve statutory purposes. Over the years, the Commission has actively asserted its jurisdiction under section 19(b) by reviewing and

ordering changes in rules of NYSE and other exchanges in light of the purposes of both the Exchange Act and the antitrust laws. Examples are rules restricting off-floor trading by members[1] and rules establishing minimum rates of commission.[2] In light of the Exchange Act and the active exercise by the Commission of its oversight jurisdiction created by that Act, the Supreme Court in Gordon v. New York Stock Exchange, Inc., 422 U.S. 659 (1975), held the NYSE's minimum commission rules immune from antitrust attack.

The Securities Acts Amendments of 1975, although preserving the basic scheme of regulation set forth in the Exchange Act, established two primary objectives -- the increase of competition between and among markets and market makers and the attainment of a national market system.[3] The 1975 Amendments require submission to the Commission of all proposed rule changes (15 U.S.C. § 78s(b)) and explicitly direct the Commission to determine whether such proposed rules impose burdens on competition not "necessary or appropriate" in furtherance of the purposes of the statute (15 U.S.C. § 78f(b) (8)). Mr. Cohen charges (p. 3) that the NYSE has been a laggard in innovation and that since the enactment of the 1975 Amendments its allegedly dominant position has been strengthened to the detriment of other markets. The fact is that each step which the NYSE has been instrumental in undertaking has been expressly sanctioned by the Commission pursuant to statute.[4]

Moreover, much of the progress toward a national market system has been due to NYSE initiative. The NYSE's innovations, discussed at length in its letter of November 20, 1978 to Chairman Williams, include:

(1) Sponsorship, in conjunction with other market centers, of the Intermarket Trading System ("ITS"), an electronic linkage among competing markets which permits brokers in any one market to reach into other markets to achieve better executions for their customers. ITS now includes five market centers and 300 listed stocks.

(2) Development of a Market Center Limit Order File ("MCLOF"), an electronic file for the storage of public limit orders. When fully implemented, MCLOF should permit the development of a block trading procedure that will further enhance the protection of public limit orders, a major objective of the 1975 Amendments.

---

1 See Release No. 34-7954. See also Release Nos. 34-11628, 34-11942, 34-13662, 34-14325 & 34-11416.

2 See Release Nos. 34-8324, 34-8923, 34-9007, 34-10206, 34-10383, 34-10560, 34-10670, 34-11019 & 34-11203.

3 See Exhibit A to NYSE submission of September 22, 1978, to the Commission.

4 See Release Nos. 34-14415, 34-14711, 34-14661 & 34-15058.

(3) Designated Order Turnaround System ("DOT"), an electronic communications system which permits member firms to transmit orders directly from their own offices to specialists' posts on the NYSE floor through an electronic switch. Confirmation is sent directly back to the broker's office through the same facility. DOT has accounted for an increasing share of NYSE trading -- now approximately 10% of NYSE volume and 40% of all the transactions on the NYSE floor.

(4) Registered Competitive Market Makers ("RCMM"), a new category of market maker, intended to further the objectives of the 1975 Amendments by increasing competition among market makers on the NYSE floor. (This last mentioned item, of course, is just one illustration of the inaccuracy of Mr. Cohen's assertion (p. 3) that NYSE specialists "have no competition on the NYSE floor.")

Even before the 1975 Amendments' call for development of a national market system the NYSE, in response to the "paperwork crisis" of the late 1960's, developed and implemented the securities depository concept -- certainly one of the most important innovations of the last decade. Today, The Depository Trust Company holds many billions of dollars worth of securities for hundreds of broker-dealers and banks throughout the country. Through its facilities, purchases and sales of securities are cleared and settled, transfers are effected, brokers' loans are arranged, and all of this is accomplished by computerized bookkeeping entry without the massive flow of paper that crippled the industry in high-volume periods of the past.

The NYSE's record of performance no doubt may alarm those who now dominate the options trading market, including Mr. Cohen's client, CBOE. However, as the Supreme Court has consistently pointed out, the antitrust laws were designed not to protect competitors but to enhance competition, and thereby to advance the public interest. Brown Shoe C. v. United States, 370 U.S. 294, 344 (1962). And, in spite of Mr. Cohen's claims to the contrary, there is little intermarket competition among options exchanges today. NYSE entry would dramatically increase such competition. Enhanced competition is a goal of both the 1975 Amendments and

the antitrust laws, and it is the goal which should guide the Commission in its deliberations on options trading.

Very truly yours,

J. E. Bush

cc: Chairman Harold M. Williams
Commissioner John R. Evans
Commissioner Philip A. Loomis, Jr.
Commissioner Irving M. Pollack
Commissioner Roberta S. Karmel
Mr. Andrew M. Klein
Mr. Ralph Ferrara
Mr. Richard L. Teberg
Mr. Milton H. Cohen