

October 11, 2006

Dear SEC:

On October 5, the SEC staff, acting under delegated authority, gave accelerated, temporary approval to two pending, highly controversial proposals submitted by the NYSE (SR-NYSE-2006-65 and 76). The reason for the accelerated effectiveness is that the NYSE's "implementation schedule" cannot be adhered to if the SEC follows the statutorily-mandated public comment period. This entire matter makes clear that the NYSE is in the driver's seat, the public comment process is largely meaningless, and that the NYSE is the tail waving the SEC dog. This can hardly be what Congress had in mind in drafting Section 19(b) of the Securities Exchange Act.

Be that as it may, the SEC staff noted (in SR-NYSE-2006-82) that the NYSE will be amending SR-NYSE-2006-76 to incorporate a proposed "interpretation" of the negative obligation.

I am deferring submitted a lengthy comment on 2006-76 until the NYSE amends that rule submission. The SEC staff must re-publish the entire proposal with the amendment, and re-start the public comment clock, as the "proposed interpretation" has implications much more far-reaching than just the stabilisation proposal (quite objectionable in its own right) originally submitted in 2006-76.

The "proposed interpretation" would unwind more than 70 years of fundamental specialist regulation. This is a hugely significant matter, as it gets to the heart of the marketmaking system on a leading primary market.

Far from an "interpretation", the NYSE is proposing a de facto recission of the negative obligation and its replacement with a "practice or pattern" test that is clearly an open sesame for direct specialist competition with public orders, in a manner completely at odds with the specialist's strict, historic duty to "stabilise" the market. As I shall demonstrate in specific detail in my forthcoming comment, the NYSE's competition-centered rationale is unsupported by anything other than mere assertion, and is clearly not sustainable when one looks at "competition" on the NYSE in the relevant historical terms.

In the event, a matter this significant should absolutely not be handled by the SEC staff under delegated authority. In the past, far less significant NYSE rule changes have been considered by the full Commission at open meetings.

It is absolutely in the public interest, for the protection of investors, that this matter be calendared for a Commission open meeting after the conclusion of the extended public comment period.

Sincerely yours,

George Rutherford

Consultant (to two institutional trading  
organisations)  
Chicago, IL