

This is a comment on New York Stock Exchange Rule Change Proposal on NYSE Rules 104(b) and 123D, File No. SR-NYSE-2007-92.

This proposal, if allowed by the Commission, would permit stocks to show initial opening trades by "specialists on a trade or a quote."

The rationale given the Commission by the NYSE for this request is because:

"When a specialist on the NYSE fails to timely open a security that also trades on other exchanges, the investor will generally trade that particular security on other exchanges so as not to miss the market. As a consequence of late openings, the NYSE could lose market volume and market data revenue."

Perhaps I am confused. I have always been under the assumption that there was to be fair competition in the national market system, as required by §11A of the Securities Exchange Act, which states in part:

- A. *It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure--*
fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets

Was I wrong?

If there is only a quote, and not a trade, there cannot be an "initial opening trade." There is always a spread in a quote—a difference between highest bid and lowest offer. For a trade to occur, either a bid must be hit, or an offer taken, thus eliminating the spread. Whenever a trade occurs, the spread must be zero.

If, as is stated on the NYSE's request to the Commission, a trade occurs on another exchange [or ECN or even at a dark liquidity pool] prior to any trade occurring on the NYSE, presumably that trade (which may well be the opening trade) will be posted on the tape and made visible for the world to see.

Under that circumstance, neither the NYSE nor any of its specialists will have had anything to do with the opening price. If the NYSE loses market share, so what? Should they be given unfair advantages to maintain what they assert to be their entitlements?

It has been a very long time since the Congress directed the Commission to facilitate the development of a national market system. Now that we are closer than we have been before, let's stop any attempts to reconstruct out-of-date systems.

Thank you.

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