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January 25, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 2549-0609

Re: File No. S7-10-04 -- Regulation NMS

Dear Mr. Katz:

In light of modifications to your original Regulation NMS Release, titled "reproposal" and dated December 15, 2004, I would like to add further comment to my previous letters dated April 7th and June 30, 2004. In addition, I would refer you to letters written by me to the Chairman and to Commissioner Atkins on Regulation NMS, which, I understand, are available in the public record.

Of the two proposals concerning the trade through rule that are up for consideration, I favor the depth of book (DOB) proposal as being more consistent with the Exchange Act Amendments of 1975 and Congress's vision of a National Market System. For Congress, technology was the key for solving the two contradictory goals of recentralizing the listed market while facilitating competition among market centers and market makers. The DOB proposal is the logical next step in doing that. The DOB proposal also recognizes the growing use of the market place by the institutional investor and the changes in pricing patterns caused by decimalization.

In trying to make the difference between the "Market BBO Alternative" (MBBOA) and the Depth of Book (DOB) proposal more graphic, consider the idea of allowing sub-decimal pricing. How ridiculous would the MBBOA look under conditions where automatic execution would apply only to a BBO showing 100 shares bid for at 22.005, 100 shares offered at 22.007? In a market dominated by institutional interest, the BBO

only is no less ridiculous to almost every commentator except for the NYSE and sundry camp followers.

The Commission is to be commended for offering an alternative to the NYSE proposed solution contained in its original release. As I have repeatedly pointed out in my letters to the Commission, time priority across markets is the best for everyone (including the NYSE), but with that proposal not being “on the table”, I strongly favor the DOB alternative.

As one would have expected, the NYSE has promptly commented to the Commission on the reproposal, arguing for “their” MBBOA. Normally, letters in support of one’s position are just that. But in this case, the language used in its cover letter is hard to ignore without comment. As an illustration, their closing sentence warns the Commission that by passing the DOB alternative they “could significantly damage investor confidence, the functioning of our capital markets and our nation’s economy”. This is language reminiscent of industry efforts in the early seventies to maintain fixed commissions.

In the expectation that the Commission intends to leave open the period of comment, I will be submitting a separate letter critiquing the NYSE’s position point-by-point.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald E. Rosen".