SR-NYSE-2006-106 and SR-NYSE-2006-105

These are my initial comments on the above New York Stock Exchange ("NYSE" or "Exchange") rule change proposals. Please post these comments on both websites.

First, why in the world would the Commission staff (pursuant to delegated authority) approve a complete restructuring of a major revenue and expense portion of the nation's largest securities exchange by a filing dated November 30 th and have it effective the following day, December 1st?

Is it not even possible that those affected by such a large policy decision—investors and issuers, as well as broker-dealers—were informed about this decision made by the NYSE's senior management (and not even by its directors), and provided with sufficient time to comment and discuss such a proposal?

Here is the explanation given by the Exchange for paying specialists initially after the effective date of the new rules:

> ***"Given the uncertainties faced by specialists in light of the complete implementation of the Exchange's hybrid market initiative over the next several months coupled with the loss of commission income, in order to provide to the specialist firms a source of payments in lieu of commissions for a transitional period, the Exchange will distribute a fixed amount of $53 million among the specialists with respect to the six-month period commencing on December 1, 2006.*** *This fixed amount will be allocated among the specialist firms based on their performance in October 2006, and will be allocated in proportion to the rebates each of the specialist firms would be entitled to under the formulas set forth in items (2) and (3) (but not item (1)) of the next paragraph. 4 The transitional rebate will be paid in six equal monthly installment."* [Emphasis added.]

If specialists provide such wonderful services, why in the world would they lose a major source of income starting in December? If they were to lose it wouldn't it be because they were no longer providing a useful service? Why should the NYSE subsidize non-productive services? Could it be because the Exchange wishes to continue the fiction that specialists are still necessary in this electronic age, and the only place specialists still exist is on the NYSE?

And where in the world did the number $53 million come from?

This is an up front, unjustified subsidy to the specialists, which include Goldman Sachs, Bank of America, and Bear Stearns, among others. One member of the Exchange's senior management held a significant position, to say the least, at Goldman Sachs. Shouldn't senior management have received approval from the directors before giving shareholders' money to a selected group? After all, NYSE Group is now a public company, not a membership club. It seems the Commission staff is forgetful of that fact.

And the Exchange's "guesstimates" of the amounts of future payments after the first six months' trial are even more bizarre.

Here's what they propose:

> *"Commencing June 1, 2007, the Exchange intends to institute a revenue sharing program that will provide variable payments to the specialist firms depending on performance. The Exchange will file a rule filing with the Commission pursuant to the Exchange Act and the rules thereunder in relation to such revenue sharing program prior to its implementation.* ***While the nature of the revenue sharing program that the Exchange will ultimately propose may change depending on market conditions in the intervening period****, it is currently anticipated that the revenue sharing program will have the following three components:*
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> *"(1) Specialists would receive a rebate (calculated on a monthly basis) of $0.000275 per share for each share of their specialty securities they either buy or sell on the Exchange.*
>
> *"(2) Specialists would receive a rebate each month relating to their absolute market share in each of their specialty stocks if that market share exceeds 35%. A market share in a stock that is equal to or exceeds 35% would entitle specialist to a rebate of (i) $15 for each percentage point above or equal to 35% up to and including 50%, (ii) $25 for each percentage point above 50% up to and including 65%, (iii) $35 for each percentage point above 65% up to and including 80% and (iv) $45 for each percentage point above 80%."* [Emphasis added.]

It is awfully thoughtful of the Exchange to add a footnote that:

> *"The Exchange will file a rule filing with the Commission pursuant to the Exchange Act and the rules thereunder in relation to any such changes prior to their implementation."*

In addition to this proposed rule, the NYSE has accompanied it with another proposal, SR-NYSE-2006-105, which removes commissions from specialists for trades in their assigned securities. Apparently specialists are no longer going to be paid for representing orders entrusted to them.

This proposal has not been approved by the Exchange's Board, but rather by its senior management, and approved by the Commission staff, rather than by the Commission. It also provides the one day notice between application and implementation, and, I would note, neither proposal has been posted on the Commission's official web site as yet (December 5th, four days after implementation.)

What in the world is happening to the Commission's usual procedures? Is the rush to implement the Exchange's hybrid system overwhelming them? After all, it has been more than 31 years since the Commission was ordered by the Congress to "facilitate" the national market system. Would another year's delay really do more harm than the Commission's "rush to judgment" in approving every twist and turn being made by the NYSE on an *ad hoc* basis as events unfold?

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