Dear SEC:

I am writing with reference to the approval order, issued by the SEC staff unnder delegated authority, on the above-referenced matter.

I have submitted a number of comments about the inadequate treatment of public comments by the SEC staff on "hybrid market" rule submissions. In the instant matter, the SEC staff has done a little better. Instead of completely ignoring responsive, substantive rebuttal, as had been their practice, the SEC staff actually acknowledged rebuttal points, but only to describe them in footnotes. The rebuttal argumentation, directly substantive, was not dealt with at all in the SEC staff's analysis in the body of the text of the approval order.

This does not meet minimally acceptable standards for professional legal discourse. The SEC staff should be under no illusion here: the impression is becoming widespread in the professional trading community that the SEC staff are merely drinking the NYSE's Kool Aid when it comes to the "hybrid market."

I have no interest in beating a dead horse, but I need to makes several observations "for the record."

1. The SEC staff did not mention at all, even in its purported "summary" of comments, my point that the NYSE's misleading language (e.g., calling something a "quote" that is never quoted) is an afirmative misrepresentation that can only confuse public investors. This is a substantive point. The SEC staff may disagree, but not to even mention it is inexcusably unprofessional.

2. The SEC staff did not deal at all with my highly substantive point that Section 11A precludes the dealer interference with public order execution at the heart of the NYSE's proposal. This issue was not dealt with analytically in the approval order for 2004-05, and should at least have been mentioned in the instant matter. Again, an inexcusable lapse by the SEC staff.

3. The SEC staff talked around the objection that the NYSE is forcing institutions to incur needless expense by hiring a floor broker to perform the clerical task of inputting an order for automated execution. The issue is not that the NYSE has chosed to "retain" floor brokers; the issue is that institutions should be given a choice (denied to them) of either hiring a floor broker for whatever "value-added" can be provided, or simply inputting automated orders themselves. The SEC staff still have not answered the question as to why an intermediary must be retained for an intermediary-less execution.

At least the SEC staff has not insulted the trading community's intelligence by stating that the NYSE's proposal is "consistent" with the1934 Act, the staff's typical representation. Rather, at every significant juncture, the SEC staff asserts that the prosal is "broadly consistent" with the Act, a relatively meaningless standard which is an open sesame for whatever interpretation one wishes to make.

It is sad to see the SEC staff damage its credibility in this fashion. One hopes, over the dog days of summer, that the NYSE at least put some ice in the Kool Aid.

Please publish this letter, as the SEC website is inviting comments on this matter.

Sincerely yours,

George Rutherfurd
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