James J. Angel, Ph.D., CFA
Associate Professor of Finance
Georgetown University[1]
McDonough School of Business
Washington DC 20057
[redacted]
Twitter: GuFinProf

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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Files: SR-NYSE-2011-56, SR-NYSE-Amex-2011-86

Re: Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Changes to Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers and to Permit Designated Market Makers and Floor Brokers Access to Disaggregated Order Information

Dear Securities and Exchange Commission:

Here are my comments regarding this matter.

Background:

Back in the olden days, the NYSE specialist was the source of valuable information about trading conditions. This information was extremely useful in helping large investors trade with a "natural" counterparty with minimal market impact. Indeed, this information was the special sauce that allowed

[1] I am also on the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, EDGX, EDGA, or anyone else for that matter.

the old NYSE to deliver transactions costs that were better than many fully automated exchanges in other countries. I personally witnessed the following example several years ago. I was visiting the NYSE floor and hanging out with a specialist and just watching the trading. A floor broker approached the specialist and indicated that he was working a large buy order. The specialist stated that there weren't many sell orders in the book, but he then pointed to another broker and said "He's brought in a 50,000 share sell order every day this week. Maybe he knows a big seller." The first floor broker walked over to the second, who then walked back to his booth, presumably to call his customer. A few minutes later, they printed a 500,000 share trade. In this way, the specialist helped a natural buyer meet a natural seller by disclosing just a little bit of what he knew about who was doing what. This reduced the leakage of information and thus the market impact for both parties.

Over the years our markets have become more automated, with almost all trading taking place via computer. The old specialists have morphed into today's Designated Market Makers (DMMs). Instead of keeping order among the floor traders, they spend most of their time tending the algos that manage their trades. Our markets have also become much more competitive. In February, the NYSE classic only traded 20.5% of the volume in NYSE-listed stocks, and almost all of that volume was machine traded. As a result of these changes, the DMMs no longer have the kind of information about who was trading that the old specialists had.

The NYSE has proposed to allow the DMMs to see some of the information contained in NYSE computers and to disclose it to floor brokers who ask. In other words, they want to allow the DMMs to have some of the kind of information similar to what the specialists used to have. This proposal is reasonable and should have been approved without delay.

No comment letters were filed, yet the SEC has instituted proceedings to determine whether to disallow this proposal. As of March 12, 2012, no comment letters had been posted on the SEC web site even regarding these disapproval proceedings. A few comment letters from the floor broker community supporting the NYSE proposal did trickle in at the end. None of the comment letters thus far have opposed this proposal.

My Comments

WHY ARE YOU WASTING SEC RESOURCES ON THIS PROCEEDING?

The SRO rulemaking process is a well-known bureaucratic process. SRO rule proposals are put out for public comment and widely scrutinized by the industry. The SRO's customers and competitors, along with consumer groups and conspiracy mongers all weigh in on the issues involved. If there were a problem with this proposal, the commenting community would have made it known in no uncertain terms. The fact that nobody bothered to write a single comment letter in opposition is strong evidence that there are no serious problems with this proposal that warrant disapproval proceedings. At a time when the SEC is dealing with all its Dodd-Frankenstein mandated work, the Commission should not be wasting its scarce resources on unimportant issues like this.

I have stated on many occasions that the SEC has been chronically underfunded and should be a better funded agency. Indeed, the SEC's cumulative budget since the beginning of its existence has been less than investor losses from Bernie Madoff alone. Yet when the SEC blatantly squanders its scarce resources on proceedings like this, it provides ample ammunition to those who argue that the SEC would waste any additional budget authority given to it.

<u>The SEC staff should not micromanage market design at this level.</u>

Although the SEC does have a number of highly knowledgeable people with solid market experience, it does not have enough of them. The SEC has better uses for its qualified people than messing around with proceedings like this. There is a strong danger that, given the SEC's work load, fine tuning decisions will be made by less knowledgeable staffers in a hasty, arbitrary, or capricious manner. These decisions should be left to the markets.

<u>This proposal may help the markets.</u>

As I pointed out above, the old NYSE provided informal mechanisms that would allow a floor broker for a large buyer to find the floor broker for a large seller while minimizing information leakage to the rest of the world. This proposal may allow the NYSE to provide similar services once again. This may help large institutions (such as the mutual funds that invest on behalf of retail customers) to reduce the market impact of their trades. This would be a benefit to all investors.

<u>The proposal does not unfairly discriminate in favor of DMMs and floor brokers.</u>

The SEC expresses concern that the proposal "may unfairly discriminate in favor of DMMs and Floor brokers (sic), may not be designed to protect the broad group of investors that trade on the SROs, and otherwise may be inequitable." These concerns are unfounded. Presumably any investor with a legitimate trading interest can go through a floor broker to get this information from a DMM. There is no unfair discrimination here. The NYSE is actually proposing to make more information available in a fair and orderly manner that will help the market. This is comparable to the supplementary data feeds that exchanges sell to the investors willing to pay for them. The investors willing to pay for the floor broker information can get it just the same.

Some investors placing orders through eQuotes at the NYSE may be concerned about information leakage when such information is shared by the DMM with the floor brokers, or used by the DMM in its own proprietary trading. This is a legitimate concern. However, if they are concerned about such information leakage, they can place their orders with the NYSE's many eager competitors. If the information is used in such a way that it degrades the quality of NYSE executions, then the NYSE will quickly lose even more market share to its competitors. Execution quality is now highly monitored by many market participants. Any changes in one market that degrade its execution quality will rapidly cause order flow to leave that market for other greener pastures.

On the other hand, the controlled sharing of this information to other serious traders may help them find a natural counterparty to the trade and thus reduce their transactions costs. This will attract order flow.

Let exchanges experiment.

The NYSE, like all exchanges, should have the commercial flexibility to experiment with different information environments. As no US equity exchange has even a fourth of the volume in any particular instrument, there is little danger in allowing an exchange to experiment. If the experiment has adverse consequences, the SEC can and should step in later.

Under US regulation, exchanges allegedly operate as Self-Regulatory Organizations. The SEC should follow the spirit of this law and allow SROs to actually use their professional judgment to innovate as they see fit.

If you have any questions, feel free to email me at angelj@georgetown.edu or call me at (202) 687-3765.

Respectfully submitted,

James J. Angel, Ph.D., CFA
Georgetown University
McDonough School of Business
Washington DC 20057
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