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This letter represents additional comments on the Commission's Regulation NMS proposal.

I believe the crux of the "Trade-Through" dilemma is best described by John Thain, CEO of the New York Stock Exchange ("NYSE"), in response to a question posed to him at a telephonic press conference on December 16th, 2004. The transcript of this press conference appears on the NYSE's web site at:

http://www.nyse.com/about/nyseviewpoint/1103207842492.html.

Here's one specific question and answer:

"Q: *I'm having trouble following the argument that centralizing all limit orders would eliminate the competition on price – I understand competition on liquidity but why would it eliminate competition on price to centralize all limit orders?*

"A: *The reason is it no longer matters who has the best price, because wherever any price is located, all markets have to go to all other markets. So today the New York Stock Exchange has the best price in NYSE-listed securities over 90 percent of the time and so we really attract order flow because we have the most liquidity and the best prices.* ***In a centralized limit order book environment, it doesn't matter where you put your orders because you have access to all of the liquidity and all of the prices anywhere in the market."*** [Emphasis added.]

Having been involved in the national market system debate since 1971, before the law was passed in 1975, being able to enter bids and offers through any access point to a true national market system is exactly what the legislators had in mind. "Access to all the liquidity and all of the prices" is the optimal solution to "best execution."

Mr. Thain's response to another question at the news conference explains perfectly why the NYSE is so opposed to such a model of the national market system.

"Q: *I apologize if you covered this ground before but I was wondering if you could go back to the top and speak about what this proposal if adopted in its present form would mean for the hybrid market and how throughout the comment period you're going to get the SEC to see things your way.*

"A: *Well the proposal has two options in it and our hybrid market will work very well with the first option - which is protecting the best bid or best offer. It would not work well at all if there was this depth-of-book proposal. We have worked extensively with the SEC, as well as with many of our customers, in developing the hybrid market to satisfy demand from customers. The assumption that we were working under in terms of Reg NMS was that it would be only the top-of-book protection.* ***So our hybrid structure***

works nicely with the top-of-book protection. It would not work with the depth-of-book protection." [Emphasis added.]

In short, Mr. Thain states the business model they have developed will not work in a true national market system. This has nothing to do with self-regulation; it is solely a business decision. As a result the Commission should be able to require that state-of-the-art systems be a requirement for our national market system. There is no regulatory reason to adopt the hybrid system, especially when it is clearly so tilted as to provide the NYSE with a continued unnecessary competitive advantage. Next:

"Q*:   I know a goal that was set by almost everybody in the hearings in April was to try and incentivize the display of limit orders.   Do you think that the depth-of-book proposal gets you there?*

"A: *No, I don't.   I don't think it encourages the display of limit orders. As a matter of fact I think it does the opposite and actually you heard Tom Peterffy at the SEC hearings say that exact thing. He's a big provider of limit orders to the marketplace, and he specifically said that if there was a centralized limit order book that he would not be inclined to display his limit orders.*

"Q: *Could you give me your opinion as to why you think other folks would not be incentivized to present them?*

"A: *This goes back to the competition between markets.   I think that investors who have the best bid or the best offer should be protected and should be traded with. Right now there is a great advantage to investors generally from competition between the marketplaces because our market actually works quite well.   Investors are able to make a choice about where and how their orders are displayed and to require that all orders have to be displayed in a central file in order to be protected I think will not make investors happy. I don't think you're going to find investors willing to put their entire limit into a centralized limit order book."*

In today's environment institutional investors often provide conditional limit orders to floor brokers on the NYSE. These do not have to be displayed or revealed to anyone until a trading opportunity presents itself.

In the electronic markets this role of the floor broker is replicated by so-called "reserve" orders. These are entered and available for execution, but are not visible. If a contra order is entered that is executable against a reserve order, it is instantly executed. Displayed limit orders are always prioritized ahead of reserve orders at the same price, regardless of when entered. In a true national market system, reserve limit orders are available to be entered and executed, and incentives to enter limit orders are enhanced.

Perhaps there is a compromise: Establish the depth-of-book program for the most heavily capitalized and traded stocks on the NYSE and NASDAQ. Leave the top-of-the-book system for the rest. Let the market compare the results. I predict the depth-of-book will be the winner, since investors will see its superiority.

You may expect an instant cry of horror from the specialists and floor brokers should you take this pilot approach, since numerous studies have shown the most heavily traded and capitalized stocks are subsidized by less important ones.[1] They will predict the end of markets as we know them, and an almost total loss of liquidity.

But be of good cheer; I well remember when the idea of negotiated commissions was first broached. "It will be the end of Wall Street!" was the cry, shouted from the mouths of some of Wall Street's most senior and respected leaders.

Next came the idea of using automation to complete trade executions, rather than shouts. The "black box," it was predicted, would doom the NYSE to the dustbin of history, and American capitalism would be lost. My associates and I were vilified for making this recommendation to the SEC's National Market Advisory Board in 1976. (We actually believed—and hoped--the NYSE would be the international winner if they made proper use of automation.)

The same cries were shouted ("Liquidity will vanish!") when decimalization was first mentioned (also by me and my associates in the 1976 presentation, and again in the early 1990s). Have you checked trading volumes and spreads before and after decimalization?

Now the idea of allowing investors the option of searching the panoply of orders to complete an execution at the very best prices without having to take time out to let the NYSE and its membership fish for profits between executions is receiving the same negative treatment from those whose livelihoods depend on having an unfair time and information advantage.

Surprise! The world did not come to an end as the result of earlier improvements. Neither will it come to an end with depth-of-book as a part of the national market system. The "Chicken Little" crowd will once again be proven wrong.

The Commission has a once-in-three-decades opportunity to get it right. I wish you well.

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[1] For example, *Do Individual NYSE Specialists Subsidize Illiquid Stocks?* Roger D. Huang, University of Notre Dame and Jerry W. Liu, Krannert School of Management, Purdue University, May 2004, and *Automation, Trading Costs, and the Structure of the Securities Industry*, Ian Domowitz and Benn Steil, Northwestern University and Royal Institute of Economic Affairs, respectively, 1997.