ES 110095

SHIELDS & COMPANY

140 BROADWAY

NEW YORK, N. Y. 10005

566

S7-10-04

DAVID V. SHIELDS
MANAGING DIRECTOR
MEMBER NEW YORK STOCK EXCHANGE

TEL: (212) 320-3018
FAX: (212) 320-3098

December 30, 2004

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W., Room 6100
Washington, DC 20549-0609

RE: SEC Regulation NMS

Dear Chairman ~~Donaldson~~, Bill,

Much heat and very little light has been shed on the trade through rule in the national press, as well as by various constituent groups in a variety of forums. It seems that the accepted best price for an institutional investor is the goal of the SEC's Reg NMS and Fidelity Management. But wait a minute – an institutional investor's best price might be the worst price for a small investor on the contra side.

If institutions are allowed to walk the book at each price increment, knowing for example they intend to buy one million shares in a nano second and pick off the public in doing so, is this the best price? And for whom? This is in fact what a Consolidated Limit Order Book (CLOB) would promote.

It should be remembered that in an agency/auction market, agency orders represent a zero sum game and therefore market structure and fairness must be considered, otherwise people who are disadvantaged will at worst vote with their wallets and leave the market; at best they will withhold liquidity until the very last moment so as not to be picked off. In either case, markets are damaged. Discretion and judgement promote liquidity. Forced disclosure stifles liquidity and favors the large investor.

NYSE Rule 127 prohibits walking the book and disadvantaging the public. When an institution with a block intends to buy a stock up (or sell it down) it must give all orders on the contra side the block price. It is not allowed to walk the book and disadvantage those public, or even institutional orders, that are exposed at intervening price points. Those intervening orders are not penalized for providing liquidity, they are given a fairer price; the block price. Fairer for the market; fairer for the contra side and even ultimately fairer for the initiator because more liquidity is encouraged in markets that are fair and open.

It is just this sort of rule that would make the NYSE hybrid unique and uniquely fair. The Fidelitys of the world want everyone else to declare themselves through a CLOB, so they can then pick them off to Fidelity's advantage. Self dealing of this sort will certainly not enhance markets and, if allowed, will harm the U.S. market as a whole.

Yours sincerely,

David V. Shields
Managing Director
Member NYSE/NASD

DVS/kd

cc: Commissioner Cynthia A. Glassman
Commissioner Harvey J. Goldschmid
Commissioner Paul S. Atkins
Commissioner Roel C. Campos