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January 18, 2004<sup>5</sup>

Mr. Jonathan G. Katz  
Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

Re: File No. S7-10-04- Regulation NMS

Dear Mr. Katz:

As a current member and active floor broker on the NYSE, I welcome and appreciate this opportunity to comment on the recent SEC re-proposal of Reg-NMS (12-15-04). I am extremely concerned about the proposal option that would create a virtual CLOB structure in our nation's equities markets.

In my 26 year career as a NYSE floor broker, private investor, asset manager and founder/managing member of an electronic trading member firm, I have witnessed many changes in market structure, market regulation and technology.

None of these changes however threatened the very existence of our current market structure, or the Institution synonymous with our capital market system, the New York Stock Exchange. The current CLOB proposal represents an unparalleled threat to a market structure and a market place that is the envy of capital markets worldwide. The virtual CLOB proposal, if passed, would render the NYSE as insignificant in fairly short order, resulting in an eventual demise and elimination of the physical trading floor. The resultant market fragmentation and market skipping in search of best price at all levels would make it impossible to maintain a physical trading floor where investor interest can be gauged and prices negotiated. At best, the NYSE would survive as a low cost electronic order router within a nationalized quasi-public utility. While this might delight both detractors and competitors of the NYSE, some questions the commission must ponder are as follows:

- In the "pursuit of progress", is the SEC prepared for the elimination of the NYSE as we know it from the global investment landscape?
- Will all investors, large and small, be better served in such a scenario?
- Would public companies derive any additional benefits in this new market-place world order?
- Do the perceived or theoretical benefits of such a radical alteration in market structure justify the known risks and unintended consequences?

In my opinion, the core of the debate really centers on whether a floor based physical auction marketplace offers unique and quantifiable benefits versus an electronic screen based model. I would submit that it does. In fact there are many studies which indicate that the quality of market performance is markedly superior on the NYSE than it is on electronic screen based systems. In fact, some of these studies were conducted by the Office of Economic Analysis and appear on the SEC's web site (Analysis of Volatility for Stocks Switching from Nasdaq to NYSE, 12/14/04 Comparative analysis of

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execution quality on NYSE and NASDAQ based on a matched sample of stocks, 12/14/04). What these and many other studies show however, is what I and the vast majority of market practitioners along with investors know empirically.

- That human judgment and value at the point of sale should never be underestimated.
- That speed, while important to some, is not the sole measure of quality.
- That price or more specifically, *the right price* is vital to all investors.
- That accountability in the marketplace, above all else, is essential.

These elements and many others are the hallmarks of the NYSE. This is what separates our listed marketplace from all others. The NYSE has embarked on an ambitious project known as the HYBRID market. The overwhelming theme behind the HYBRID is investor choice. Investors in this country and worldwide, individual and institutional should be afforded the opportunity to choose their venue, their execution preference and their order delivery and handling method. A CLOB structure removes these choices. It heaps all investors into a homogenized one-size-fits-all market structure that benefits only those with business agendas. That is not good for investors, it is not good for our marketplace and it certainly is not good for America.

Respectfully submitted,

  
Michael J. Rutigliano  
Member, NYSE

MJR/

cc: Chairman William H. Donaldson  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Cynthia A. Glassman  
Commissioner Harvey J. Goldschmid  
Annette L. Nazareth  
Robert L. D. Colby