7

RECEIVED
SEP 2 4 2004
OFFICE OF THE SECRETARY

DONALD E. WEEDEN
145 MASON STREET
GREENWICH, CT 06830
PHONE: (203) 861-7610 FAX: (203) 618-1758
E-MAIL: don_weeden@weedenco.com

NYSE-2004-05

August 31, 2004

William Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Dear Bill:

I have studied in more depth the NYSE proposed rule changes and have spoken with a number of people from the other market centers. Unfortunately, they confirm my initial reaction that, by making Direct Plus auto-ex, competition will continue to decrease and that New York will end up doing most of the volume in listed stocks.

New York already enjoys 80% of the volume and around 92% of the trades. That is despite their being considered a slow market vis a vis the other market centers and opaque, complicated and execution uncertain to many of its larger customers who have, in frustration, increasingly used automatic electronic venues.

Putting aside for the moment the reasons for this anomaly, any improvement in the accessibility of New York's BBO for instant execution plus the ability to sweep automatically will, by definition, increase their market share.

This will have two effects:

The first is to further undermine the willingness of non New York dealer capital to maintain markets in competition to the specialist and second; it will increase New York's share of the transaction and quotation revenues collected by the CTA.

Based upon the numbers in the NMS Release the excess of CTA revenues over costs make this a sizeable chunk of money. This will be used by New York to further subsidize customer services in competition with other market centers – elimination of access fees, reduction of transaction charges, incentives to specialists, additional data information on a select basis all come to mind.

While ECN's might find auto-ex via Direct Plus an improvement over what exists today, they do not maintain markets (i.e., they have no responsibility to contribute to the liquidity of the market) and they operate solely as an order gatherer no different from Merrill Lynch, a regional broker, a fourth market firm or a crossing network.

Meanwhile, competing market centers (Exchanges) whose market making has been decimated by 30 years of a dysfunctional ITS and more recently by decimalization will further move their business into other activities (for example, options at the Boston Stock Exchange and indexes on the Philly Exchange) or will give up the ghost entirely and revert, as the Pacific Stock Exchange did, into an ECN.

Shifting back to the benefits for the ECN's, if the New York market is now auto-ex accessible what reason do investors have to continue supporting the ECN's?

What is frustrating to this observer is the fact that these kinds of issues are not discussed in Regulation NMS – and, even worse, might not even be understood.

In 1999, in response to the problem that had long existed in the OTC market, the Commission vigorously forced a structural change that combined the benefits of dealer liquidity and public order flow into a centralized display and execution facility that preserved the function and future innovation of the several players. While not perfect, as the existence of locked and crossed markets shows, it was a giant step toward what was envisioned in the Exchanges Act Amendments of 1975. Should not Regulation NMS be considering a similar structure for listed stocks?

In order to avoid making this letter too long let me end by suggesting that the Commission go very slowly in accepting the NYSE rule changes as proposed until further thought and open discussion is given to these issues.

Best regards,