September 6, 2005

Dear SEC:

I am writing to comment on the above-referenced rule submission even though it has not yet been formally published for comment by the Commission. I am doing so because the NYSE has improperly characterized this proposal as appropriate for expedited approval, when it manifestly is not.

The NYSE has characterized the proposal as a system modification; in fact, the proposal directly impacts how orders are supposed to be executed under NYSE rules, and would take away a price improvement benefit for public investors that the current rules provide. (The rules are probably honored more in the breach these days, but nonetheless the rules as written continue to be applicable, and the NYSE needs to engage in formal rulemaking to modify them if it believes the rules no longer make sense in its market).

The NYSE is proposing to automate the execution of "elected" portions of so-called "CAP-DI" orders, but has misrepresented how the NYSE's rules are supposed to operate. The specialist does not simply "manually execute" the order, as the NYSE would have it. Under NYSE rules, the elected portion of a CAP-DI order becomes a limit order to be represented by the specialist as agent in the auction market. As with any limit order (and consistent with the NYSE's definition of a limit order), the specialist is required under NYSE Rules 76 or 91 to expose the order for possible price improvement before completing the execution of the order. These requirements were in no way changed when the SEC approved the CAP-DI rule, as was confirmed to me by the NYSE staff at the time the CAP-DI rule was approved.

On page 7 of its proposal, the NYSE gives examples of how the proposal would operate. Example one is disingenuous and inaccurate. Assume, for instance, that the 9000 share offer at 20.07 represents orders on the public limit order book with priority, but that there is a broker in the trading crowd with a "not held" sell order who entered the crowd just as the first trade was completed. When the 2500 shares are elected on the CAP-DI order, the NYSE's rules require the specialist to first bid 20.06 on behalf of the elected CAP-DI order to see if the seller will give the order price improvement (as I mentioned, the NYSE staff specifically acknowledged that this is how the rule is supposed to work). Under the NYSE's proposal, however, the CAP-DI order cannot receive price imrovement, but will simply be executed at 20.07.

Clearly, the NYSE is proposing more than a simple "system enhancement" here. The NYSE is taking away a public benefit, and, as has been the case with several recent NYSE filings, it does not honestly acknowledge what it is doing, and submit appropriate amendments to Rules 76 and 91.

The NYSE needs to resubmit this proposal for approval on a normal, rather than expedited, basis. I will submit an in-depth comment on this proposal when it is officially published for public comment.

Sincerely yours,

George Rutherfurd