

October 24, 2005

Dear SEC:

I am writing with regard to the above-referenced rule submission. The NYSE has acted honourably (and saved itself a degree of public embarrassment) in withdrawing SR-NYSE-2005-69, its purported "clarification" of SR-NYSE-2005-57. By doing so, however, the NYSE has tacitly acknowledged its failure to "rationalise" the immediate effectiveness of SR-NYSE-2005-57, which my prior correspondence has amply demonstrated was obtained on the basis of (i) a mischaracterisation about the rule submission's impact on the order execution process; and (ii) a failure to acknowledge that the proposal is in fact part and parcel of the proposed hybrid market, no aspect of which has otherwise been approved under the Commission's normal prior public comment process. As I have demonstrated, the NYSE is not simply "systematizing" a manual order execution process; in fact, it is removing orders from the auction and proposing an order execution dynamic less favorable to public orders than the current physical auction.

The Commission must find that the NYSE's proposal raises significant issues with respect to the protection of investors because the proposal replaces an environment in which it is possible for public orders to receive improved prices with an execution dynamic that renders price improvement impossible.

One can debate the merits and demerits of the NYSE's proposal, but it is inarguable that the proposal raises public investor protection issues that render the proposal ineligible for immediate effectiveness (no prior public comment) under the Commission's rules.

As I have previously indicated, the NYSE should be directed to resubmit this matter, with appropriate rationalisation, as an amendment to the hybrid market proposal, with appropriate opportunity for prior public comment.

I ask that the SEC staff publish my comments of October 11 and October 12, 2005 (which were submitted under file SR-NYSE-2005-57 as well as SR-NYSE-2005-69) on the Commission's website under SR-NYSE-2005-57.

Sincerely yours,

George Rutherford
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