COUNCIL OF INSTITUTIONAL INVESTORS

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November 24, 2003

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

Re: SR NYSE 2003-34

Dear Mr. Katz:

The Council of Institutional Investors, an association of more than 140 corporate, public and union pension funds collectively holding more than $3 trillion in pension assets, is writing to comment on proposed changes to the governance of the New York Stock Exchange.

The Council is pleased that the NYSE recognizes that these changes should only be considered part of a "transitional structure," and that many more changes may be necessary and warranted after completion of the Commission's inspection and investigation of the NYSE's specialist regulation.

While the proposed split-board structure is a modest improvement over the exchange's current oversight model, the Council believes that a number of additional changes must be incorporated in the NYSE's final structure. Of primary concern to Council members is the governance related to the NYSE's regulatory function. The Council does not believe that the proposed dual-board structure adequately addresses investor concerns over ineffective and disinterested efforts by the Big Board to regulate and oversee its members.

1. The Council has long questioned the propriety of the exchanges having any regulatory authority. These concerns have been shared by others. More than five years ago, an independent commission chaired by former U.S. Senator Warren Rudman came to the conclusion that the NASD needed to separate the regulation of its member firms from the operation of the Nasdaq market. In reaching this recommendation, the report concluded that the NASD's governance "failed to keep pace with the significant growth and continuing evolution of the Nasdaq market" and the "expansion of the NASD's regulatory responsibilities."

   Clearly, these concerns have been and continue to be applicable to the NYSE.

   Self-regulation does not work for investors. It did not work for the accounting profession and it is clearly not working at the stock exchanges. And investors are further harmed when exchanges have different regulatory structures.

It is time for the SEC to address this issue for all exchanges.

A variety of alternatives should be considered. The SEC, with increased funding and staffing, could take over the regulatory roles. Or all exchanges could be required to truly separate their regulatory and business functions, as has occurred at the Nasdaq. However, with this structure, it is imperative that a mechanism be put in place for independent funding of the separate regulatory arms.

The Commission should host public roundtables and other open forums to discuss this important issue. A starting point for discussions could be the excellent white paper issued by the Securities Industry Association on "Reinventing Self-Regulation," which provides a comparison of different regulatory models. It is critically important that input be received from all market participants—not simply broker-dealers and specialists.

2. To ensure that the investing public has the necessary information to evaluate the performance of the NYSE and recommend final changes to its governance model, the Council urges the Commission to publicly release its 40-page report on the NYSE—a report that has apparently already been leaked to the press—and the NYSE's response to the report.

3. Special attention must be paid to the board of directors responsible for overseeing the regulatory roles. Clearly, broker-dealers and specialists should not have the authority, as is currently the case at the NYSE and as proposed under the NYSE's transitional structure, to select the individuals charged with their oversight.

   The Council believes that directors overseeing regulatory arms should not be nominated or elected by the firms under their oversight. The Council believes that a nomination model similar to the one in place for the Public Company Accounting Oversight Board should be adopted, with the SEC having sole responsibility for appointing directors of oversight bodies.

   Investors should have a meaningful representation on boards overseeing regulatory issues.

4. The NYSE should commit to adopting gold standards for disclosure. And disclosure should be readily available to all interested parties. Ideally, the NYSE should post on its website all documents, including governance documents such as reports from board committees and executive and director compensation information.

Please contact me with any questions.

Sincerely,

Sarah A.B. Teslik
Executive Director

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