April 24, 2006

Dear SEC:

The NYSE's rationale in support of the above-referenced rule submission is patently absurd.
The NYSE is proposing to permit specialists to destabilise the primary market to "match" bids or offers in other markets, regardless of the nature of that market or the size of the bid or offer that would be matched.

The NYSE suggests two reasons why this would be appropriate:

1. It is a nuisance to get Floor Official approval.

2. Specialists are already permitted to match away bids and offers in ETFs.

With respect to the first reason, the requirement of Floor Official approval has always been perceived as a necessary safeguard against specialist over-reaching, a benefit that clearly outweighs the minor inconvenience of seeking approval. The approval process is a necessary check and balance here to ensure that matching an away bid or offer is appropriate under the circumstances(e.g., the bid/offer is substantial, and not simply a nominal bid/offer in a tertiary market that should never be the basis for destabilising the primary market). And the NYSE's assertions that the specialist's trade has to meet the test of "reasonable necessity" are make-weight pabulum. Of course the rules continue to apply, so the NYSE is saying nothing substantive. The problem is that the NYSE is proposing to remove the mechanism for determining that necessity, the requirement for Floor Official approval. Without that mechanism, the NYSE's assertions are meaningless, as the NYSE and the public are otherwise left, from an enforcement standpoint, with a standard-less subjective quagmire.

The second reason is brain-dead nonsense, as the SEC's ETF approval orders make clear. The reason that specialists can make technically (but not really)"destabilising" ETF trades is that ETFs are derivatively and objectively priced, and the NYSE is by no means the primary market/price setting mechanism here. The specialist does not "destabilise" the market by simply matching a price that is objectively determined by a wide range of asset values.

The situation with equities is far different. Prices are not objectively determined, and most investors look to the prices prevailing in the primary market,not nominal bids/offers in tertiary markets.
Allowing specialists carte blanche here to destabilise the primary market is simply another step forward in the dealerisation of the NYSE, a process, as it is being carried forward, that is not in the interests of public investors.

The current rules work well. They protect the public, and the integrity of the NYSE price discovery mechanism. These benefits more than make up for whatever "inconvenience" specialists may experience.

The Commission should not approve the NYSE proposal.

Sincerely yours,

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