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

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OFFICE OF THE SECRETARY

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

S7-10-04

Dear Bill:

At the ICI Equity Markets Conference last week Annette Nazareth gave an excellent summary of the public's response to Regulation NMS and then concluded with the hope that some final recommendations would be forthcoming by year-end.

Before that happens I have some further thoughts that I would like to share.

The first has to do with the phrase "Public Auction Market" used by the NYSE in your April Hearings to distinguish its market structure from the electronic markets. As you know, back in the seventies it was used to differentiate an auction market from a dealer market, located in private trading rooms, invisible to the public eye and without regulatory oversight. The comparison was appropriate then but is totally misleading today. The new electronic markets with their automatic execution and full disclosure have become the real public auction markets and should be understood as such. They are the eBays serving the public at large as opposed to the more traditional Sotheby's with limited access.

New York claims price discovery and price improvement are unique qualities of their floor based auction and are lost when their manual more deliberate process is replaced by automatic execution.

Watching Super Montage operate tells quite a different story. Any player in the OTC market, whether insider or public investor, is able to see the inside quote, plus additional price points. All prices are firm and can be hit or taken with a simple keystroke. Price discovery is ongoing and instantaneous. Price improvement is continuous. If an investor is not satisfied with what he sees in the market, he can insert a better bid or offer, add size to what is posted already, or remove a previously placed bid or offer easily and quickly. No delays, no loss of control, no uncertainty, no precedence or parity to contend with. The Commission should be complimented on helping to bring it about. In fact, the question one asks is "why isn't Regulation NMS requiring the kind of changes forced on the OTC market (and the option market) rather than trying to accommodate a market place that is clearly out of step?"

Another phrase, "Hybrid Market" was also used extensively in the hearings and is the term used by New York to describe its proposed changes. The term was recently created by the CBOE to describe their market place which evolved when the Commission forced the options markets to change their ways. It is considerably different from what NYSE is proposing as their hybrid market.

First of all, New York does not have competing market makers on their floor and the changes being proposed do not contemplate making room for them.

Secondly, CBOE is in the process of allowing off the floor market making where there will be similar access to their electronic limit order book. That means liquidity can be provided for the benefit of a public order from dealer capital both on and off the floor. This is not part of the New York rule change.

Thirdly, the CBOE has fully embraced the Commissions insistence that all market centers dealing in options be firmly linked together. In this regard the New York changes are vague and confusing regarding improving ITS with no timing on when it would take place. Past history puts in question that it will ever happen without strong Commission pressure.

Getting back to the ICI Conference, there was talk that there would be another supplemental release coming shortly. If so, I hope that it deals in greater depth with the CTA's excessive revenues and cartel like governance. But more on that one later.

Again best regards,

Don