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S7-10-04 #6

March 15, 2004

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D. C. 20549

Dear Sir:

I am writing this letter to you as a lessor member of the New York Stock Exchange.

I am deeply concerned about the efforts of a few large institutional investors to modify or eliminate the "Trade Through Rule". This rule is by far the best protection for all the other institutions and individual investors.

The "Trade Through Rule" mandates the best price for all investors. Weakening or destroying this rule would be a catastrophe for all but the powerful few.

These large institutions that are working to change or eliminate this rule do have problems of their own. The larger they become, the larger their problems become. Mutual funds can, and some do, close funds when they grow to an unmanageable stage. However, larger institutions cannot control the growth. There are only so many stocks that qualify under their investment policies. This can result in very large positions in individual stocks. These problems need to be addressed in some manner other than destroying the "Trade Through Rule".

I believe these problems are further complicated by some managers' belief that they are a very powerful individual, because of the tremendous amount of assets under their control and that they would receive preferential treatment, even at a great loss to all other investors.

I have attached a New York Stock Exchange Policy Perspective that will give you further background information on this important matter.

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If you have any questions, please feel free to contact me.

Sincerely,

William M. Hess

Background Information:

University of Pennsylvania BS in Economics 1941
Ensign USNR 1941
Aircraft Carrier Hornet CV12 1943 to 1945 Asst. Navigator
Aircraft Carrier ROI CVE 103 1945 to 1946 Navigation Officer
Reynolds & Co., 1946
Member New York Stock Exchange 1953 , Woodcock, Hess & Company became the first member corporation.

# NYSE Policy Perspective

**The Trade-Through Rule:**
**Protecting Investors, Helping Companies, and Preserving the Integrity of Markets**

Intermarket competition based upon best prices has benefited U.S. investors and contributed to making the market for NYSE-listed stocks the most liquid and efficient in the world. The trade-through rule, at the heart of the National Market System, is now under threat. Weakening or eliminating the rule could cost investors as much as $3.5 billion annually in increased execution costs. It would increase the volatility of markets, lessen transparency, and damage or destroy the intermarket system, which is central to maintaining competition across the markets and dealers in the United States.

***What is the trade-through rule?***
Bids and offers for NYSE-listed shares offered on the NYSE, as well as on Nasdaq, the regional exchanges, and ECNs, are linked together and visible to all market makers. The trade-through rule is intended to foster competition and transparency among all markets, while guaranteeing investors receive the best prices and the lowest execution costs when they buy or sell shares. The rule, while protecting investor interests, does not prevent broker-dealers or buy-side firms from sending customer orders in NYSE securities to other venues willing to compete on best price. In fact, 20 percent of the volume in NYSE stocks is currently executed in other markets.

***Why does the trade-through rule matter to investors?***
The trade-through rule protects investors from receiving something other than the best price when they trade their shares. Weakening of the trade-through rule would take away investors' assurances that their representatives are working to execute their trades at the best price. The difference between the best price and the second best price can be significant—more than 4 cents per share for the S&P100 stocks listed on NYSE. These additional expenses would affect all investors, large and small. But the brunt of them would be borne by small investors who are less able to monitor closely execution costs and to question their brokers or agents about prices received. Investors deserve and demand the highest quality order executions and the best price on their transactions.

*(over)*

NYSE
New York Stock Exchange®

## Cost to Shareholders of Trading Through
## NYSE-Listed S&P 100 Stocks (93 companies)

*Average National Best and Second-best Bid and Offer Prices*

| NYSE-Listed S&P100 Stock | National Best Bid ($) | National Best Offer ($) | National Best Spread (cents) | National Second-Best Bid ($) | National Second-Best Offer ($) | National Second-Best Spread (cents) | Cost to Investors without Trade-Through Rule (cents) |
|---|---|---|---|---|---|---|---|
| Average | 39.88 | 39.89 | 1.83 (cents) | 39.83 | 39.93 | 10.25 (cents) | 4.21 (cents) |

*Note: Based on intra-day price quotes for week of December 8-12, 2003.*

***Why does the trade-through rule matter to companies?***

NYSE-listed companies currently enjoy the advantages of head-to-head price competition — where all buyers and sellers bid against one another in real time for shares, rather than in a fragmented system where different clusters of traders transact at different prices in the same security. Companies benefit since their share prices are less volatile and more reflective of fundamentals. Owners find that their holdings are more liquid. Retail investors are not pushed aside by buyers and sellers of very large positions, and the same prices apply to all. Quoted bid-ask spreads are narrower in the marketplace for NYSE stocks, lowering execution costs and particularly benefiting medium and smaller companies. Companies with more liquid securities are thus able to raise new capital in IPOs or in secondary offerings in a marketplace that brings together the largest number of buyers and sellers within a unified pricing mechanism.

***Why is the trade-through rule good public policy?***

The trade-through rule promotes both best price and competition among markets. Eliminating or diluting the trade-through rule would mean a return to the uncoupled markets of 30 years ago. It would weaken competition and transparency by licensing each market to ignore better prices elsewhere. It would increase the likelihood that intermediaries charged with managing households' wealth would put their own convenience or interests above that of their clients; more freely engaging in practices such as internalization and payment for order flow, which increase their own profitability at the expense of investors. It would seriously impair the fair and accurate price discovery and stock valuation. And at the end of the day, the trade-through rule is about preserving a principle at the core of our markets: the ultimate investor must always get the best price.