Comment Letter on Proposed Changes to NYSE's XPress System, April 2004

April 8, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Automatic Execution of Institutional XPress Orders (SR-NYSE-2003-42)

Dear Mr. Katz:

The Investment Company Institute[1] appreciates the opportunity to comment on the New York Stock Exchange's proposed rule change relating to the establishment of a pilot program providing that Institutional XPress orders be executed immediately against an XPress eligible liquidity bid or offer and not be exposed for price improvement.[2]

The Institute has made numerous recommendations to the NYSE over the past three years aimed at improving its Institutional XPress and Liquidity Quote systems.[3] Most significantly, we recommended that the NYSE make XPress orders ineligible for price improvement.[4] The Institute commends the NYSE for taking steps to begin implementing greatly needed changes to increase the automatic execution of orders and for moving towards an environment in which investors can more effectively reach liquidity beyond the Exchange's best bid and offer. We also are hopeful that the current proposal will provide incentive for funds and other investors to place more limit orders on the Exchange and urge the NYSE to continue to consider our other recommendations to improve its trading systems.

The Release states that the NYSE would not institute the pilot program until certain technological enhancements are completed that would enable floor brokers to electronically input their trading interest into the Exchange's published quotation. It is unclear, however, how long the NYSE believes it will take to complete these enhancements. We urge the NYSE to move expeditiously to make these necessary technological changes and implement the proposed pilot program as soon as possible.

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We appreciate the opportunity to comment on the proposed rule change. If you have any questions regarding our comments, please contact the undersigned at 202-371-5408.

Sincerely,

Ari Burstein
Associate Counsel

cc: John A. Thain, Chief Executive Officer
Richard G. Ketchum, Chief Regulatory Officer
Catherine R. Kinney, President and Co-Chief Operating Officer
Robert G. Britz, President and Co-Chief Operating Officer
New York Stock Exchange

Annette L. Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation
Securities and Exchange Commission

ENDNOTES

[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,595 open-end investment companies ("mutual funds"), 612 closed-end investment companies, 124 exchange-traded funds, and 5 sponsors of unit investment trusts. Its mutual fund members have assets of about $7.554 trillion. These assets account for more than 95 percent of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households.

[2] See Securities Exchange Act Release No. 49391 (March 10, 2004), 69 FR 12884 (March 18, 2004) ("Release").

[3] See letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Richard A. Grasso, Chairman, New York Stock Exchange, dated March 1, 2001; letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Catherine R. Kinney, Group Executive Vice President, New York Stock Exchange, dated June 26, 2001; letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 7, 2001; and letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated January 23, 2003.

[4] Other recommendations included eliminating the required displayed time for a quote to qualify as an XPress quote and allowing XPress orders to reach through to orders on the book below the best bid and offer and execute and price improve those orders.