



**CalPERS**

**Board of Administration**

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May 13, 2004

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

**Re: File No. S7-10-04  
Regulation NMS**

Dear Mr. Katz,

I am writing to you on behalf of the California Public Employees' Retirement System (CalPERS). CalPERS is the largest public pension system in the U.S., with approximately \$160 billion in assets. We manage retirement benefits and health insurance on behalf of nearly 1.3 million members.

CalPERS is pleased to provide comment on the Commission's proposed uniform rule for all NMS market centers that, subject to certain exceptions, would require a market center to establish, maintain, and enforce policies and procedures reasonably designed to prevent the "trade-through" execution of an order in its market at a price that is inferior to a price displayed in another market. We applaud the proposed expansion of a uniform rule that applies to all markets and not just floor-based exchanges. We recognize the leadership of the Commission as well as the staff in the development and support for this important reform and for that we are grateful. Accordingly, we are offering our strong support for the proposed trade-through rule amendments.

As currently written, the trade-through rule is obsolete. Technological disparities exist among markets, and the current trade-through rule should not be allowed to protect less efficient markets at the expense of those that are more efficient. Therefore, we support the proposed rule amendments that would require floor-based exchanges, such as the New York Stock Exchange, to have an automated system in place that would allow faster markets to execute trades in NYSE-listed stocks automatically.

**California Public Employees' Retirement System  
Lincoln Plaza - 400 P Street - Sacramento, CA 95814**

We equally support the proposed provisions for two exceptions to the proposed trade-through rule:

A market center would be allowed to execute an order that trades through a better-priced bid or offer on another market center if the person entering the order makes an informed decision to affirmatively opt out of the trade-through protections.

An automated market, without restriction, would be able to trade through a better displayed bid or offer on a non-automated market up to a de minimus amount of one to five cents, depending on the stock's price.

The current rule fails to allow for important factors that modern investors or pension fund managers may want to consider when trading, including certainty and speed of execution. While we agree that "best price" is a significant and needed variable, the Commission's proposed amendments to the current rule protects the fundamental principle of price priority while enhancing investor freedom.

As mentioned earlier, we strongly support the proposed rule. However, our support is contingent upon a clear rule that provides investors with a legitimate choice as to how and where their trade order is executed. The Commission has correctly focused on situations where changes are needed to modernize the national market system while protecting the fundamental principle of price priority. Updating the current trade-through rule with the Commission's proposed amendments is a commendable step toward safeguarding investor freedom, protecting a competitive market environment, and accomplishing the preservation and integrity of the capital markets.

Thank you for the opportunity to comment. Please feel free to contact Bill McGrew, Investment Officer, Corporate Governance, at (916) 341-2431 with any questions.

Sincerely,



Mark Anson,  
Chief Investment Officer – CalPERS

Cc:  
CalPERS Board of Administration

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