

Precis of proposed testimony to the SEC:

We thank the Commission for the opportunity to testify today.

When Congress first set forth laws establishing the framework and goal for a national market system (NMS) in 1973, it could not and did not anticipate the explosion of US equity markets that has marked the past three decades. Nor could it have foreseen the remarkable extent to which new technologies have broken barriers and created new venues for capital formation and liquidity. Rightly, the Commission now seeks to update the NMS to reflect new market and technological realities.

But there is another reality that the past three decades have brought us that is notable, and all the more so for its omission in Regulation NMS. Exchange rates among the major currencies that had been fixed since the end of World War II were freed, and a new major world currency was eventually born. Japan became a global economic power and for a time was the world's largest creditor nation, London's "Big Bang" in 1986 heralded the beginning of significant pro-market reforms across the globe, and the socialist economic model was routed – even in communist countries – as the Soviet Union fell. China has become one of the largest economic powers. US banking and financial services globalized, and international trade ballooned, followed by the accelerated development of new capital and equity markets around the globe. A vast array of new financial instruments was born, and markets that had never existed were created in equities, fixed income, commodities and futures. We are now negotiating and enforcing global standards for everything from trade, to accounting, to corporate governance.

VIA's position is that competition among national exchanges is a good thing and supports the Commission's formulation of avoiding "the extremes of, on the one hand, [of] isolated market centers and, on the other hand, a totally centralized system that loses the benefits of vigorous competition and innovation among market centers." The Commission sets out a goal "to achieve the appropriate degree of integration". But what is missing from this formulation is any analysis of the potential impact of the proposed Regulation NMS with respect to extra-national competition. Many developed nations, including a majority of the G7 nations have historically had highly uncompetitive equity markets due to their business model and regulatory regime. But now, after much reform and in an era of electronic business models that know no borders, what aspect of the proposed NMS specifically promotes continued US supremacy?

In the midst of this highly internationalized economic environment, the United States cannot afford to review major proposed changes to areas of global economic dominance as an intramural fight, unquestioningly confident of our continued primacy. In the proposed Regulation NMS, there are four substantive proposals that are intended to achieve the following objectives:

1. Promote equal regulation of market centers
2. Update antiquated rules

3. Promote greater order interaction and displayed depthⁱ

Taken together, these may all be worthy purposes. In addition, in each of the proposed rule changes, the Commission has in accordance with several statutesⁱⁱ included sections on “Consideration of the Costs and Benefits”, “Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation”, and “Consideration of Impact on the Economy”ⁱⁱⁱ. However, while nothing precludes the SEC from considering the impact of the proposed changes on the international competitiveness of our equity markets, there is no analysis or discussion of these possible effects. Indeed, with the exception of two passing references in the text about the positive effects of decimalization on international competitiveness, there is no mention of an international perspective anywhere in the text.

We believe that the US markets can be more competitive than they are now and act as a magnet to attract net gains in international listings and international investment capital. However, we also believe that the competition will only become more intense, and that structural market reforms like those proposed are rightly considered infrequently. It is essential that we get the formula – the business and economic model – very right. The debate that has raged in the industry on these issues has been far too insular for far too long. New entrants to the US marketplace like Eurex have demonstrated how vulnerable we can be to competitive models. VIA believes that more analysis needs to be done to assure that we fully understand the potential impact of the proposed changes on the relative international competitiveness of the US equity markets.

We again thank the Commission for its time and this opportunity to present our views.

ⁱ The Commission also believes that the proposed rule would enhance depth and transparency by preventing trading interest from being spread across an increasing number of price points. It also would prevent market participants from gaining priority over a standing limit order without making an economically significant contribution to the price of a security. In these respects, the proposed rule would encourage market participants to use limit orders, an important source of liquidity. Accordingly, the proposed rule may promote market efficiency, competition, and capital formation. In addition, the proposed rule would also bolster investor confidence by ensuring that their orders, especially large orders, can be executed without incurring large transaction costs. This increase in investor confidence should also promote market efficiency, competition, and capital formation.

The Commission believes that the proposed rule would establish common quoting conventions that would increase transparency in the markets. Moreover, the Commission believes that the proposed rule would encourage interaction between the markets and reduce fragmentation by removing impediments to the execution of orders between and among markets. The increased transparency in the markets and reduction of fragmentation between the markets may bolster investor confidence, thereby promoting capital formation.

ⁱⁱ “Section 3(f) of the Exchange Act^{H 123H} requires the Commission, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a) of the Exchange Act^{H 124H} requires the Commission to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.”

ⁱⁱⁱ “For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or “SBREFA,”^{H 125H} the Commission must advise OMB as to whether the proposed regulation constitutes a “major” rule. Under SBRFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is “major,” its effectiveness will generally be delayed for 60 days pending Congressional review. The Commission requests comment on the potential impact of the proposed regulation on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.”