Memorandum

To: File No. S7-02-10

From: James R. Burns
Counsel to the Chairman

Date: April 6, 2010

Re: Options

On April 6, 2010, Chairman Schapiro, Haimera Workie, and I, along with Jamie Brigagliano and Dave Shillman of the Division of Trading and Markets, met with Dan Mathisson, Managing Director and the Head of Advanced Execution Services for Credit Suisse; Mary Whalen, Managing Director and Co-Head of Public Policy Americas for Credit Suisse; Vaishali Javeri and John Anderson of Credit Suisse; and Annette Nazareth, Partner at Davis Polk & Wardwell. Among the topics discussed was the Commission's January 14, 2010 concept release on equity market structure.

CREDIT SUISSE

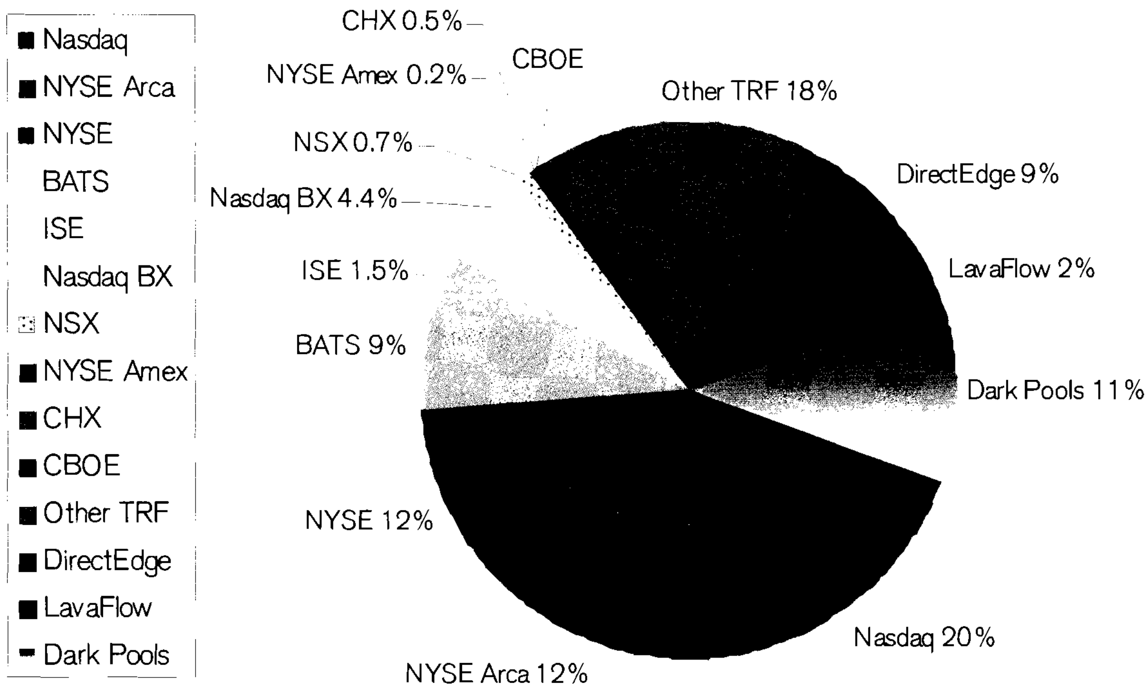
Thoughts on the SEC Concept Release

Credit Suisse

April 6, 2010

Reg ATS and Reg NMS have worked

After 12 years, there is a vibrant and healthy competition:

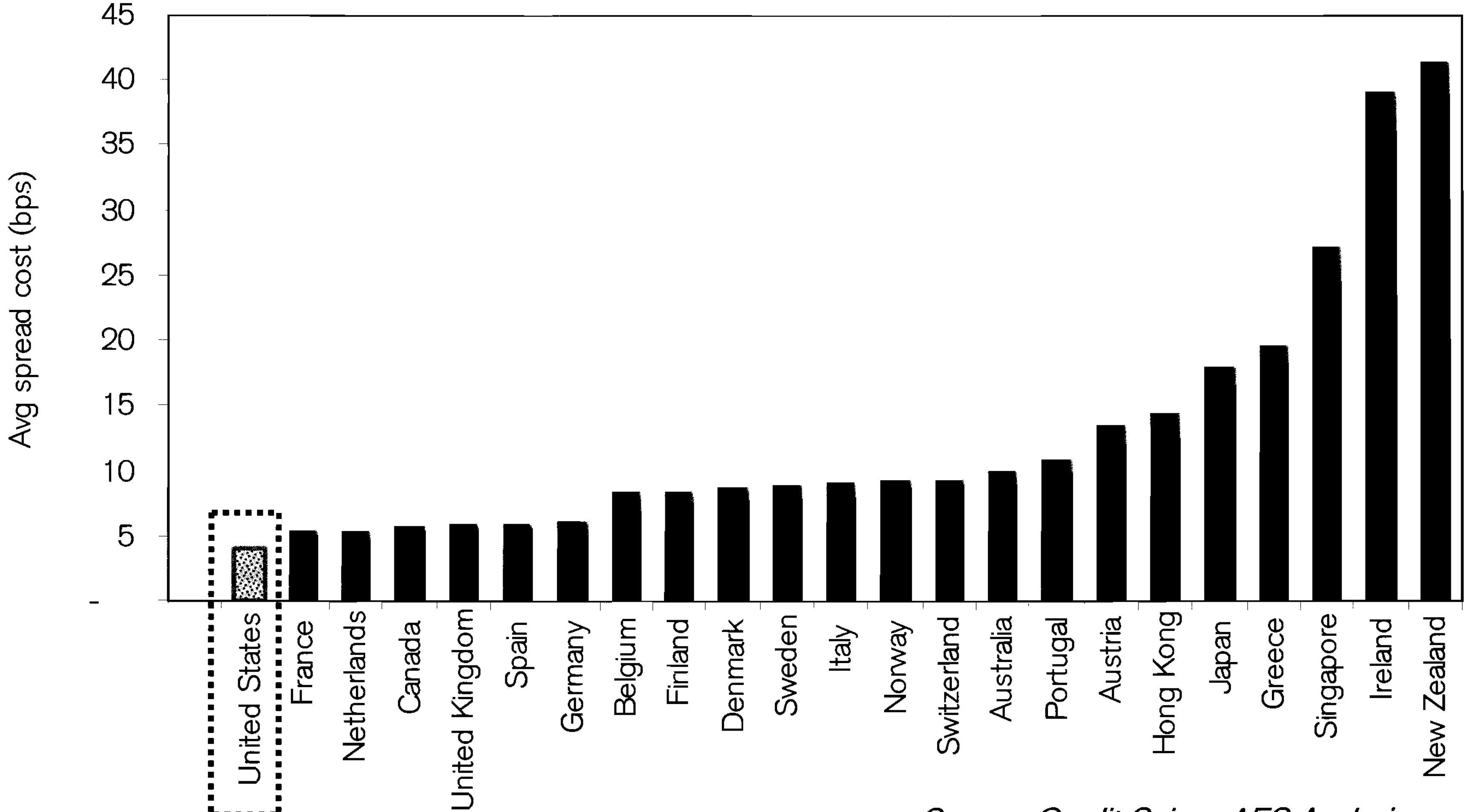


"Other TRF" includes broker capital commitments and internalizations
Data for March 2010

Source: Credit Suisse AES Analysis

ATS/NMS worked: US the world's tightest market

Bid /Ask Spreads Globally, Q1 2010:

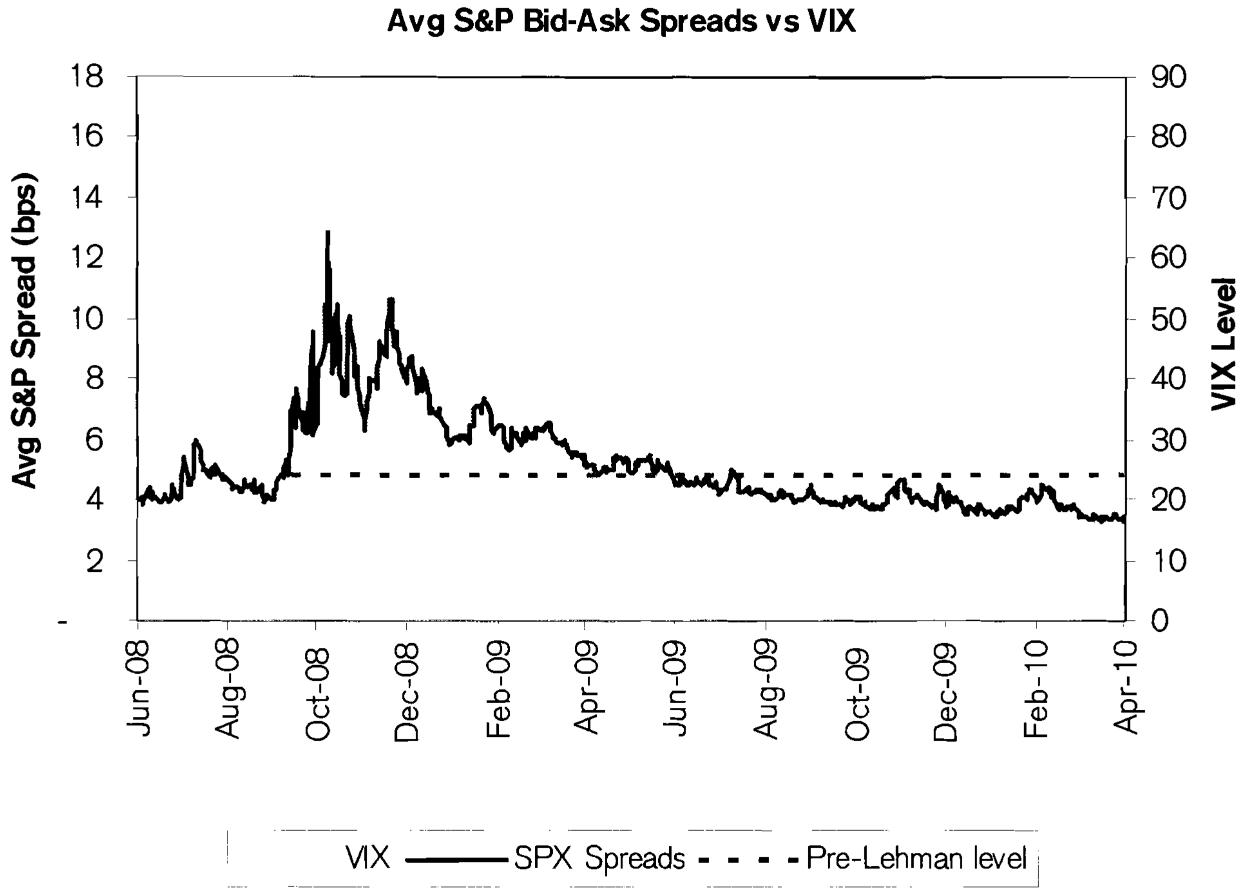


Source: Credit Suisse AES Analysis

CREDIT SUISSE

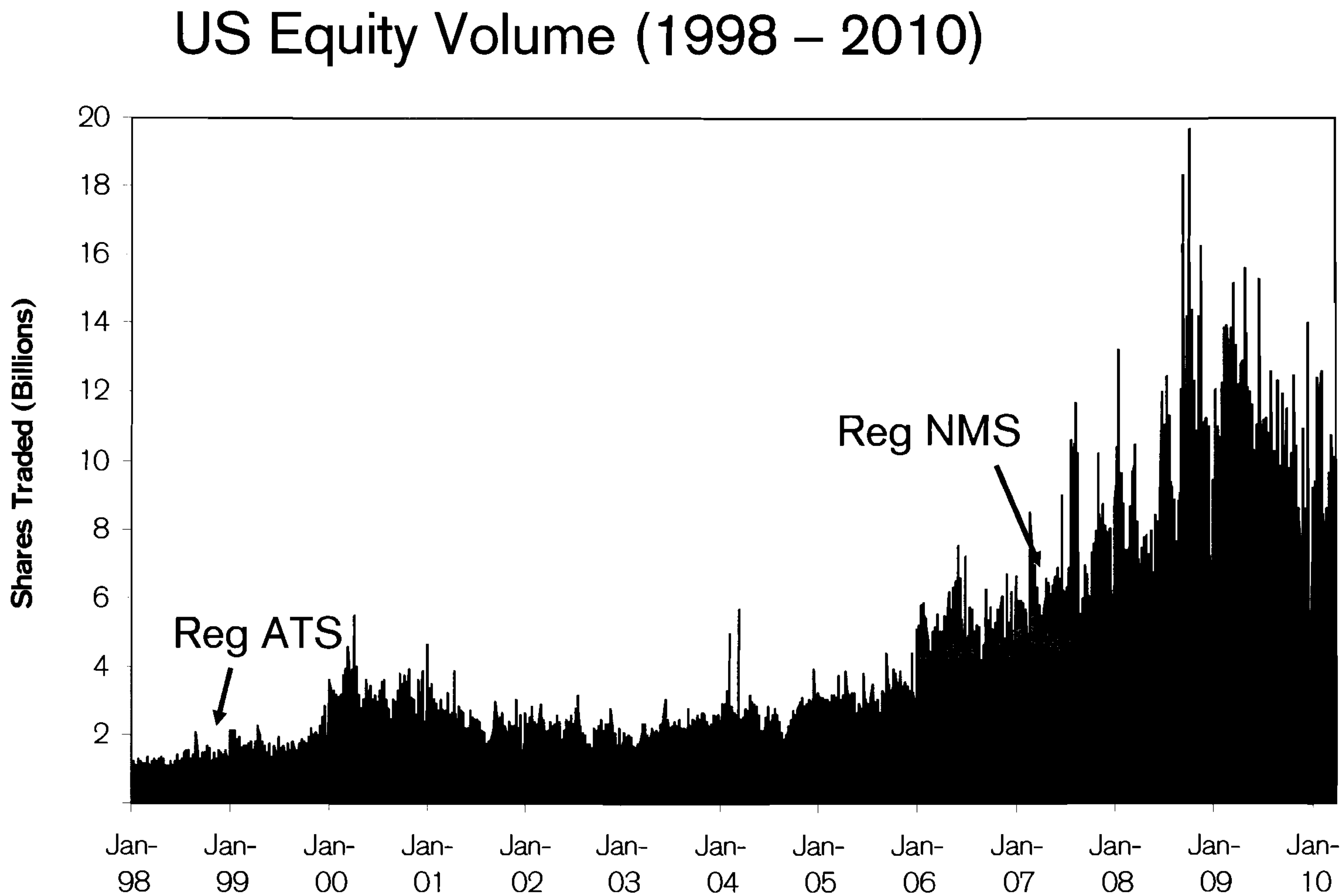
ATS/NMS worked: US the world's tightest market

Bid /Ask Spreads June 2008 – March 2010:



Source: Credit Suisse AES Analysis

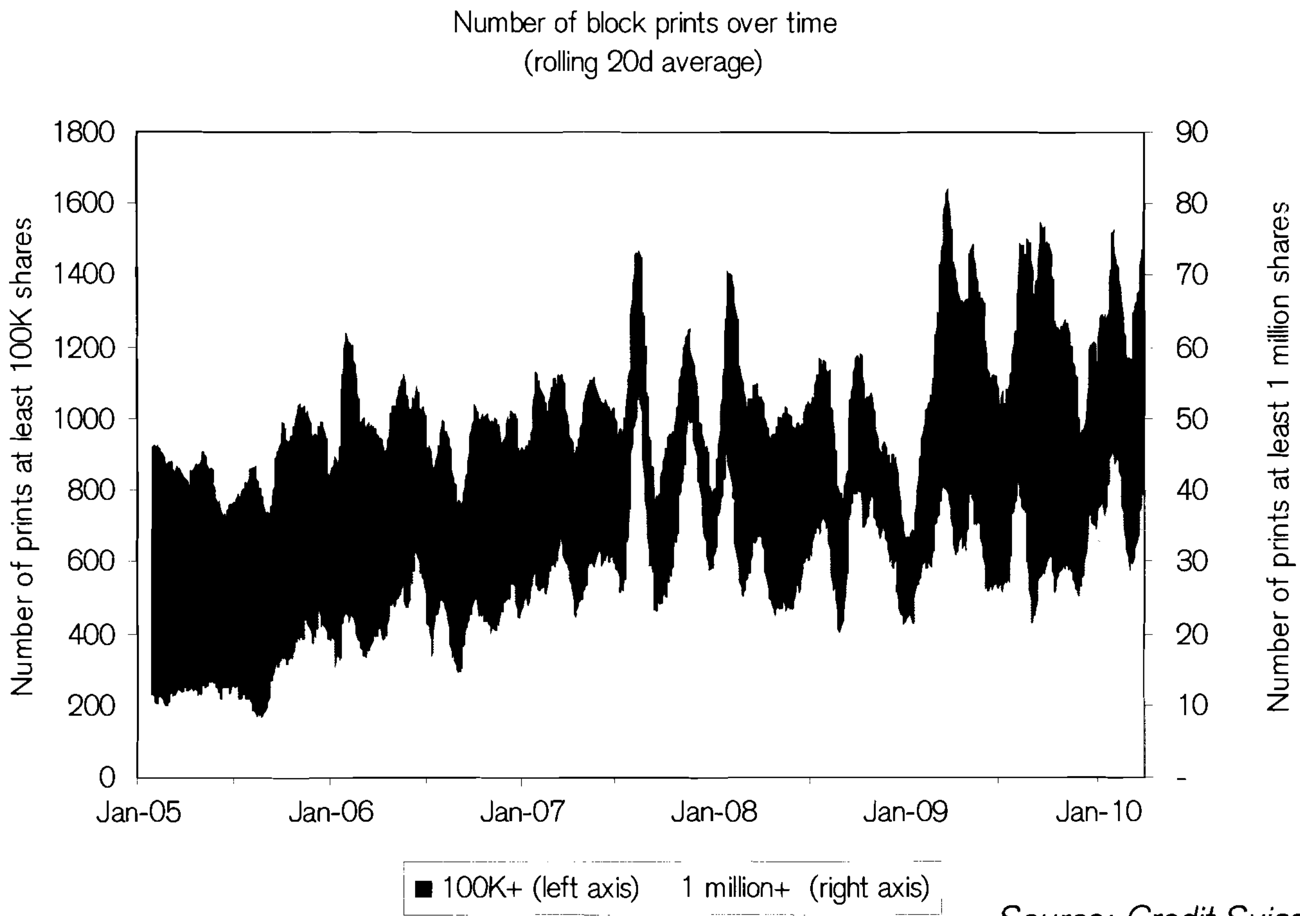
ATS/NMS worked: US the most liquid market in the world



Source: Credit Suisse AES® Analysis

ATS/NMS worked: large blocks actually growing

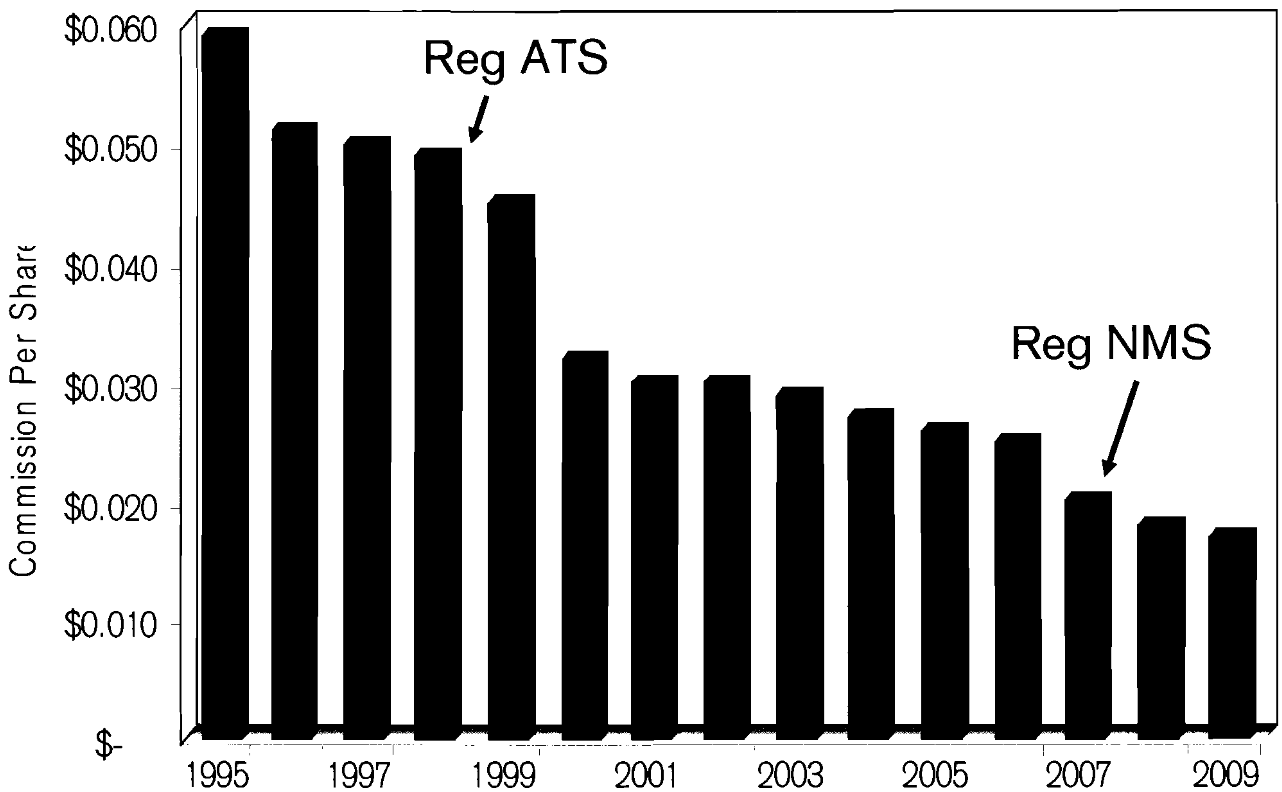
Number of blocks (Jan 2005 – March 2010)



Source: Credit Suisse AES® Analysis

ATS/NMS worked: institutional commissions are low

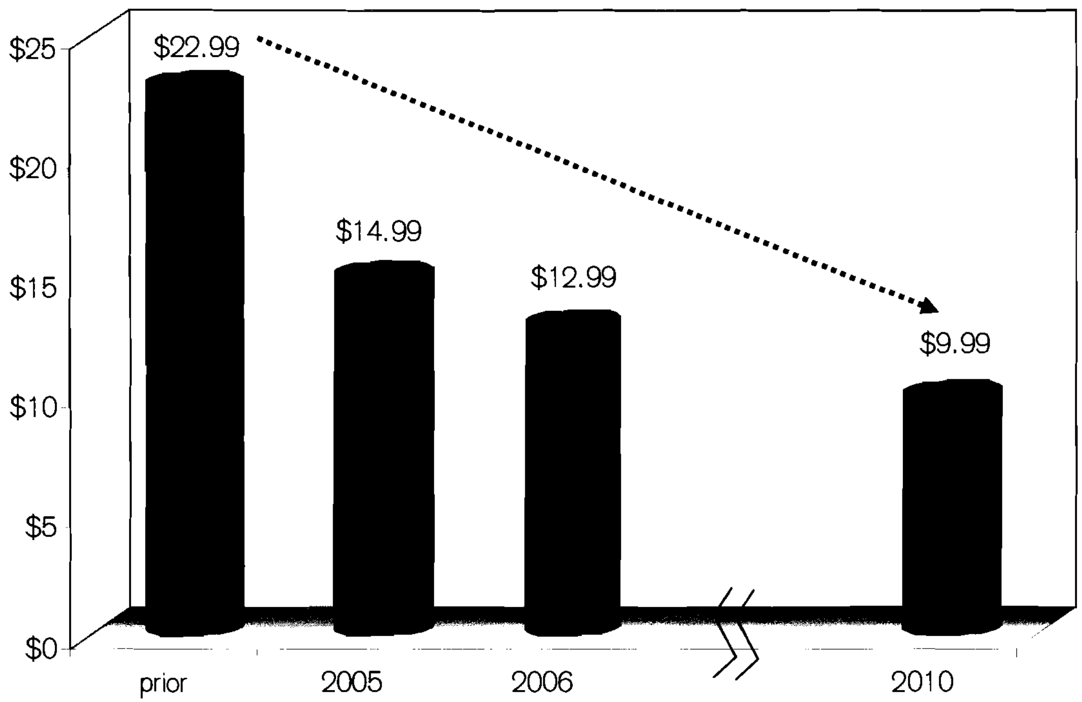
Avg Institutional Commissions Per Share, U.S. 1995 – 2009



Source: Tabb Group, SIA Database, Credit Suisse Research

ATS/NMS worked: retail commissions are very low

E*Trade Advertised Retail Commission (2003 – 2009):



Source: Credit Suisse Research

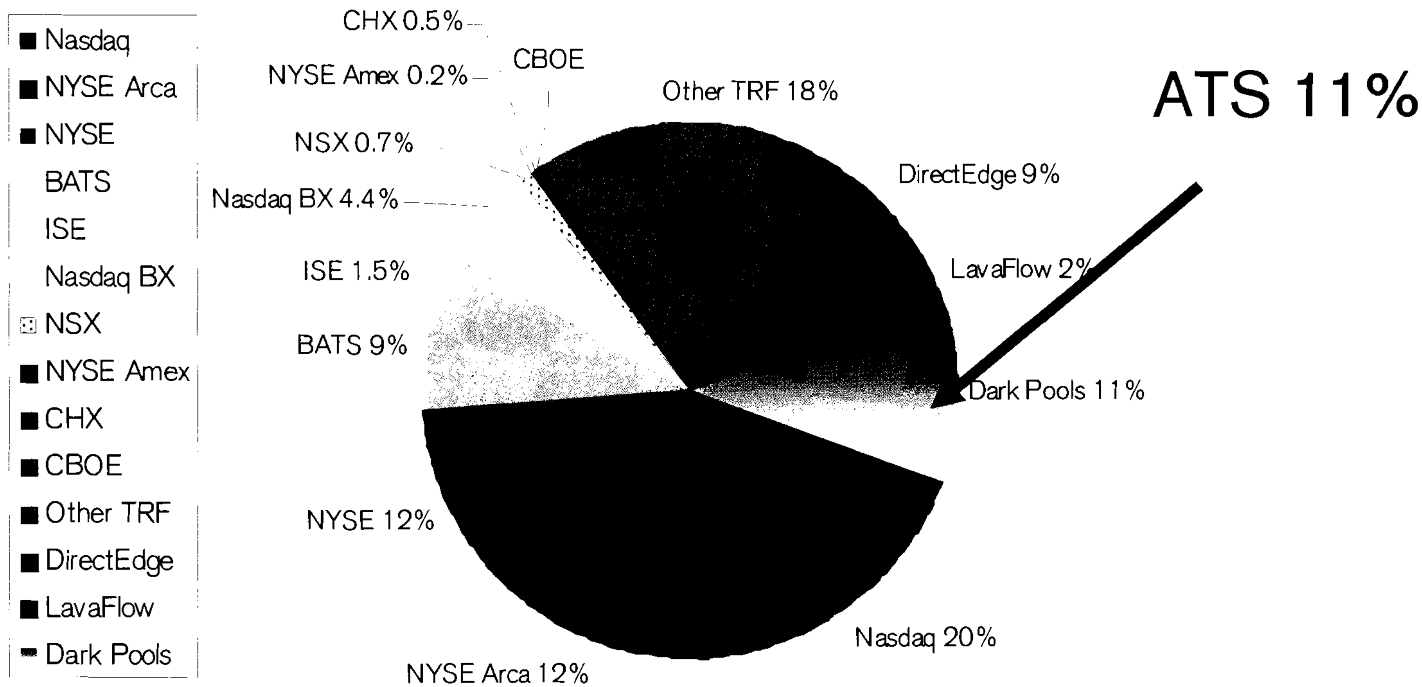
Long-term effects of Reg ATS and Reg NMS

Current market structure has led to:

- Tight bid/ask spreads
- High volume
- Large # of block trades
- Low retail commissions
- Low institutional commissions

Issue 1: Fair Access to ATS's (page 72-73 of release)

US Equity market breakdown (February 2010)

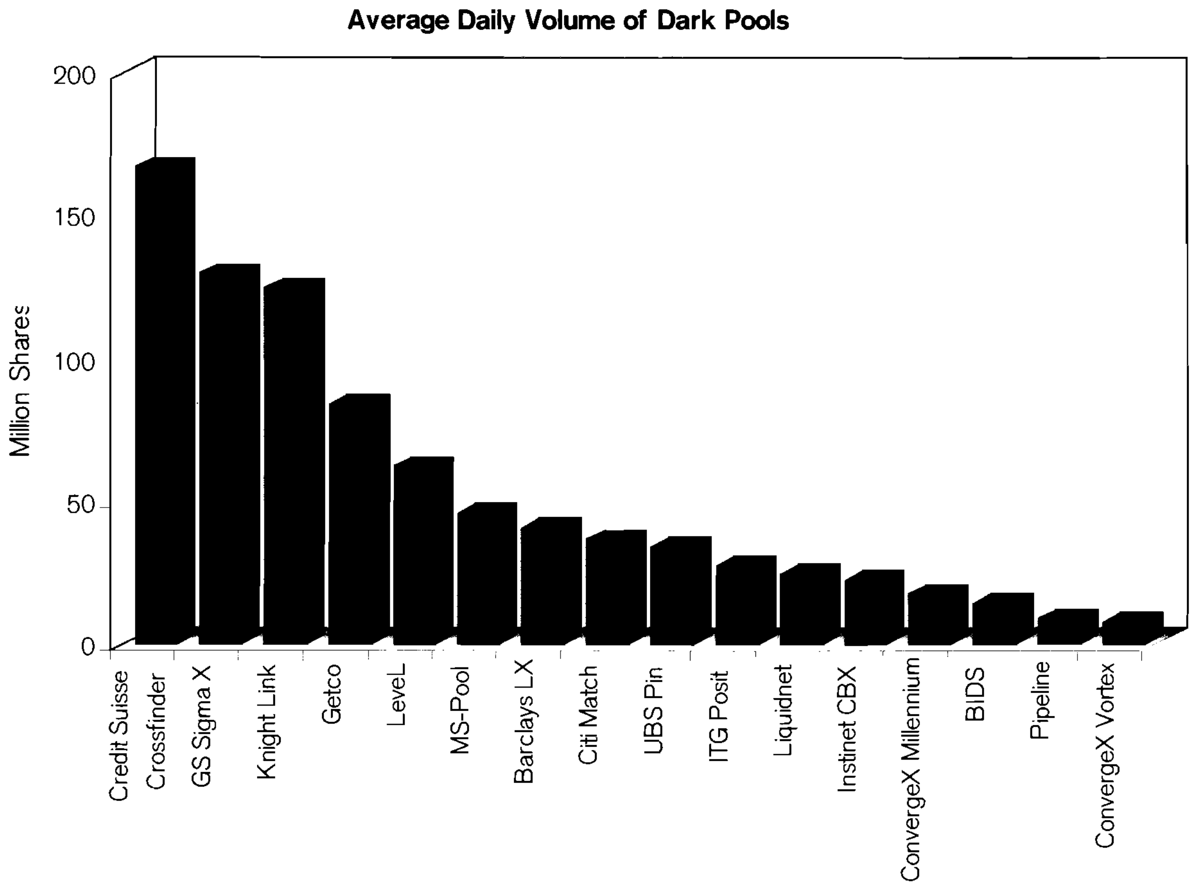


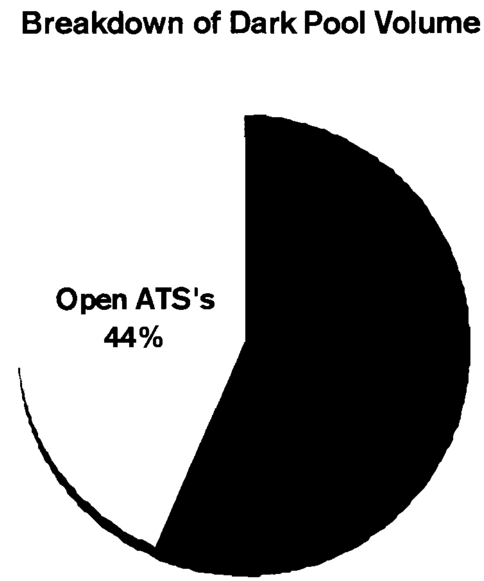
"Other TRF" includes broker capital commitments and internalizations
Data for March 2010

Source: Rosenblatt Securities

Issue 1: Fair Access to ATS's

Average volume per day in "closed" ATS's:





	Avg Shares / Day (millions)	% of all volume
"Closed" ATS's	481.2	56%
Open ATS's	370.9	44%

Source: Volume data from Rosenblatt Securities, February 2010.

Issue 1: Fair Access to Dark Pools

Solve the real issue: fragmentation due to exclusive ATS's.

Proposal: Lower the Fair Access threshold from 5% to 0%.

ATS access above the threshold is currently based on objective criteria: *"the standards for granting or denying access must be reasonable, documented, and applied in a non-discriminatory manner."*

Note: a 0% threshold for fair access would not mean ATS's couldn't exclude – only that they couldn't exclude capriciously.

end ATS discrimination!

Issue 2: Price Discovery (p.67-70 of the release)

Exchange floors: the original dark pool

"Dark Pools" are just electronically replicating what used to occur on the NYSE floor:

Client: "Hey Joey, buy 200,000 XYZ not-held. But don't show any of it on the quote. I just want you to keep your eyes and ears open."

Broker: writes down the order, stuffs it in his pocket, and wanders off to specialist post.

Broker: "Jimmy, anything going on in XYZ today?"

Specialist: "Nothing, it's dead. You got anything?"

Broker: "Nothing I can show now. But I know of a guy who may be looking for some."

Specialist: "OK, I'll let you know if I hear of any sellers."

The broker is working a dark order!

Issue 2: Price Discovery

Benefits of dark liquidity

Credit Suisse uses "Dark Pools" because it produces better trading outcomes for long-term clients like mutual and pension funds.

Using data from June 2009 we divided VWAP (Volume Weighted Average Price) algo orders into those that used dark liquidity and those that did not and measured performance. The orders were from a broad cross-section of clients and securities.

- *Slippage vs. VWAP when using dark liquidity -0.14cps.*
- *Slippage vs. VWAP when NOT using dark liquidity -0.99cps.*

0.85 cps savings from using dark liquidity

Issue 2: Price Discovery

Do dark pools ruin "Price Discovery"?

- Traders can not be forced to show bids and offers they don't want to show. Reducing dark liquidity would almost certainly just result in increased slicing of orders.

- "Price discovery" in illiquid markets is driven by selling price, not bids or offers. Houses and illiquid stocks are priced off last trade.

Issue 3: ATS Regulatory Structure (page 73)

Why do ATS's exist?

ATS's have led market structure innovation for 12 years:

- Maker/Taker Pricing
- Electronic Limit Order Books
- Electronic Block Trading
- Intelligent Inter-Market Connectivity
- Peg Orders, Iceberg Orders, Hidden Liquidity Orders, etc.

- Successful ATS's become exchanges once the cost advantages of exchange clearing exceed the costs of getting licensed.
- Successful ideas pioneered at ATS's are adopted by incumbent exchanges as they compete for order flow.

Issue 3: ATS Regulatory Structure
Is exchange liquidity different?

January 13, 2010: **LaBranche** sells all specialist operations to Barclays.

February 11, 2010: **GETCO** buys 350 specialist pads from Barclays.

5 specialist firms on the NYSE:

1) GETCO
2) Goldman
3) BofA
4) Barclays
5) Kellogg Group

specialists 2004

specialists 2010

Issue 3: ATS Regulatory Structure

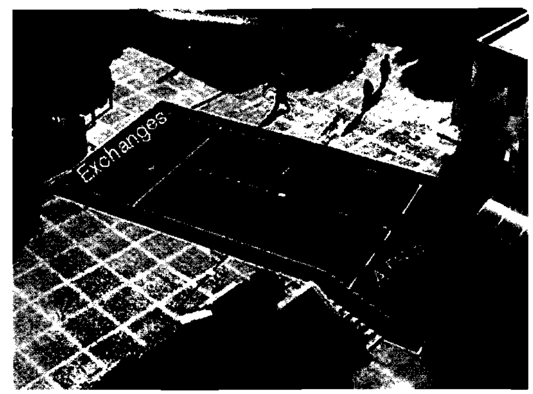
Exchange

- Receive tape revenue
- Clear trades for free (RIO)
- Low net capital requirements
- Regulatory approval required before major changes
- 20% ownership requirement
- SRO responsibility

ATS

- No tape revenue
- Pay for clearing (NSCC)
- High net capital requirements
- 20 day filing required before major changes
- No ownership limits
- Pay FINRA fees

Currently, exchanges have economic advantage over dark pools, which is why BATS and DirectEdge have both chosen to become exchanges.



tennis, anyone?

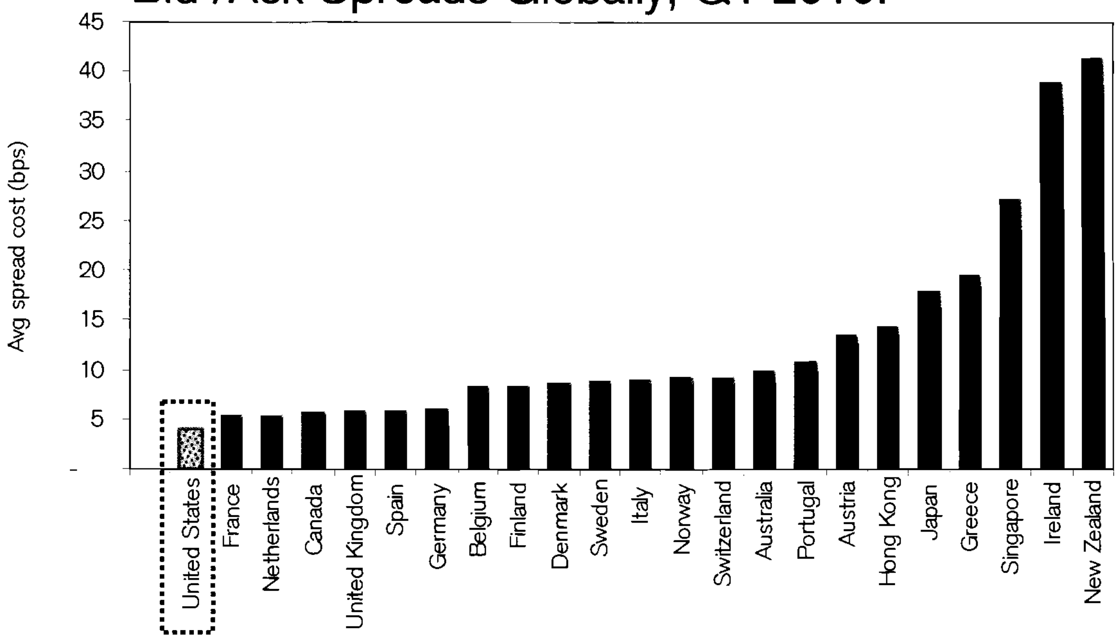
Issue 4: "Trade At" rule (page 70-71)

Should Reg NMS be changed to protect displayed liquidity?

Visible bid / ask spreads are tightest in the world.

What problem is being solved here?

Bid /Ask Spreads Globally, Q1 2010:



Exchange "take" fees are a major cost of trading. "Trade At" would drive costs up by eliminating competition with cheaper alternatives like ATS's and OTC market-makers.

Issue 4: "Trade At" rule
Should Reg NMS be changed?

A "Trade At" rule would have many unintended consequences:

- Drive retail commissions significantly higher, by forcing retail brokers to take expensive exchange liquidity instead of trading for free, or even rebated by OTC market-makers.
- Drive institutional commissions higher, by forcing brokers who match stock upstairs to first take expensive exchange liquidity.
- Potentially benefits HFT (primary displayers of liquidity) while hurting long-term and retail investors.
- Would decrease number of block trades, by making it harder to print, and by causing order slicing as dark venues become less competitive.

Conclusion

- As a result of Reg ATS and Reg NMS, the U.S. market is more liquid than ever, with the tightest bid/ask spreads in the world.
- The best market structure is a vibrant competition among market centers with strong fair access rules.
- "Trade At" would discourage competition, and is therefore a bad idea.
- Dark pools play an important role in allowing long-term investors to trade without revealing information.