



January 26, 2005

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

Dear Mr. Katz:

On behalf of American Shareholders Association (ASA) and the organization's membership of individual investors, I want to thank you for the opportunity to submit comments on the Commission's proposed Regulation NMS.

Last June, ASA expressed support for the original Regulation NMS proposal on the basis of the "opt out" provision of the trade through rule being retained in the final rule. It was our opinion then, as is now, that critical to the success of Regulation NMS to benefit individual investors was this provision being included.

Unfortunately, not only has the "opt out" provision been removed, but the Commission is also proposing to extend the trade through rule to NASDAQ traded securities. Expanding the antiquated trade through rule will be harmful to investors by severely limiting choices, restricting competition, and driving up costs. Moreover, the Commission has not demonstrated the proposed changes will benefit individual investors and/or market structure.

ASA and its more than 10,000 members of individual shareholders believe that the trade through rule does not achieve its objective to "protect" individual investors by seeking the best price. In practice, the exact opposite situation occurs - when prices are not available or in the cases of insufficient liquidity the costs to investors increase. As such, the trade-through rule may actually be harming investors by restricting their ability to achieve best execution. It is ASA's belief that investors should be given choices to better meet their individual needs.

Twenty-years ago investors did not have direct market access and thus could not choose between price, speed, and liquidity that technology can now provide. Yet, the trade-through rule has hampered the ability for investors to take full advantage of this new technology, which forces investors to move through slower markets and face higher execution costs. This is resulting in lost efficiency gains to investors and the U.S. economy.

As I wrote in my June letter to the Commission:

Nearly 200 members of ASA, all of whom are individual investors, have commented on this rule in support of modernizing U.S. equity markets by repealing the trade-through rule. They articulated

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clearly to the SEC that **“our mutual fund managers, pension fund managers, insurance companies and other representatives deserve the ability to communicate trading priorities that meet their customers’ unique needs.”** The opt-out provision will achieve this objective and I urge the Commission to ensure this is included.

The Commission’s shifting position on this critical issue is troubling. Last year, it appeared that the SEC was committed to opening up new choices for investors and competition in markets. Now, a new position has been taken that not only reverses the original rule, but also turns the entire concept of investor choice and market competition on its head by seeking the apply trade through to NASDAQ-listed securities. Applying trade through to NASDAQ-listed securities will impose new costs on investors and will keep the existing barriers of competition among stock markets remaining fully intact. As a result, the SEC proposal to apply trade through to NASDAQ-listed securities does not improve market structure and investor choice by building upwards, but rather, hurts investors by dragging market structure downwards. If approved, the SEC has started a race to the bottom to the peril of individual investors.

Furthermore, this proposal continues a path of SEC rules that continue to be based on emotion rather than empirical evidence. SEC commission reports and publicly available data show no trade through problem on NASDAQ. The market is more competitive than the listed market and provides greater execution of trade for investors. The Commission has not proved that this is needed.

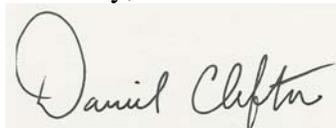
ASA finds the Commission proposal to be somewhat ironic. The United States is the center of free markets around the world. Central to the operation of free markets is competition and liquidity. Yet, the Commission is proposing to over regulate the markets and stifle competition. The symbolism of restricting choice, competition, and liquidity for the markets that provide capital for free markets to operate is just appalling.

Regulation NMS has put forward the discussion on improving market structure for U.S. equity markets. Unfortunately, as the proposal currently stands, this opportunity is being squandered by the Commission.

On behalf of American Shareholders Association I urge you to remove the trade through application on NASDAQ-listed securities and reinsert the “opt out” provision is included as part of the reformed trade-through rule.

Thank you for the opportunity to discuss these critical issues facing investors.

Sincerely,

A handwritten signature in black ink on a light beige rectangular background. The signature reads "Daniel Clifton" in a cursive script.

Daniel M. Clifton
Executive Director